April 22d

Ruled

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 230.

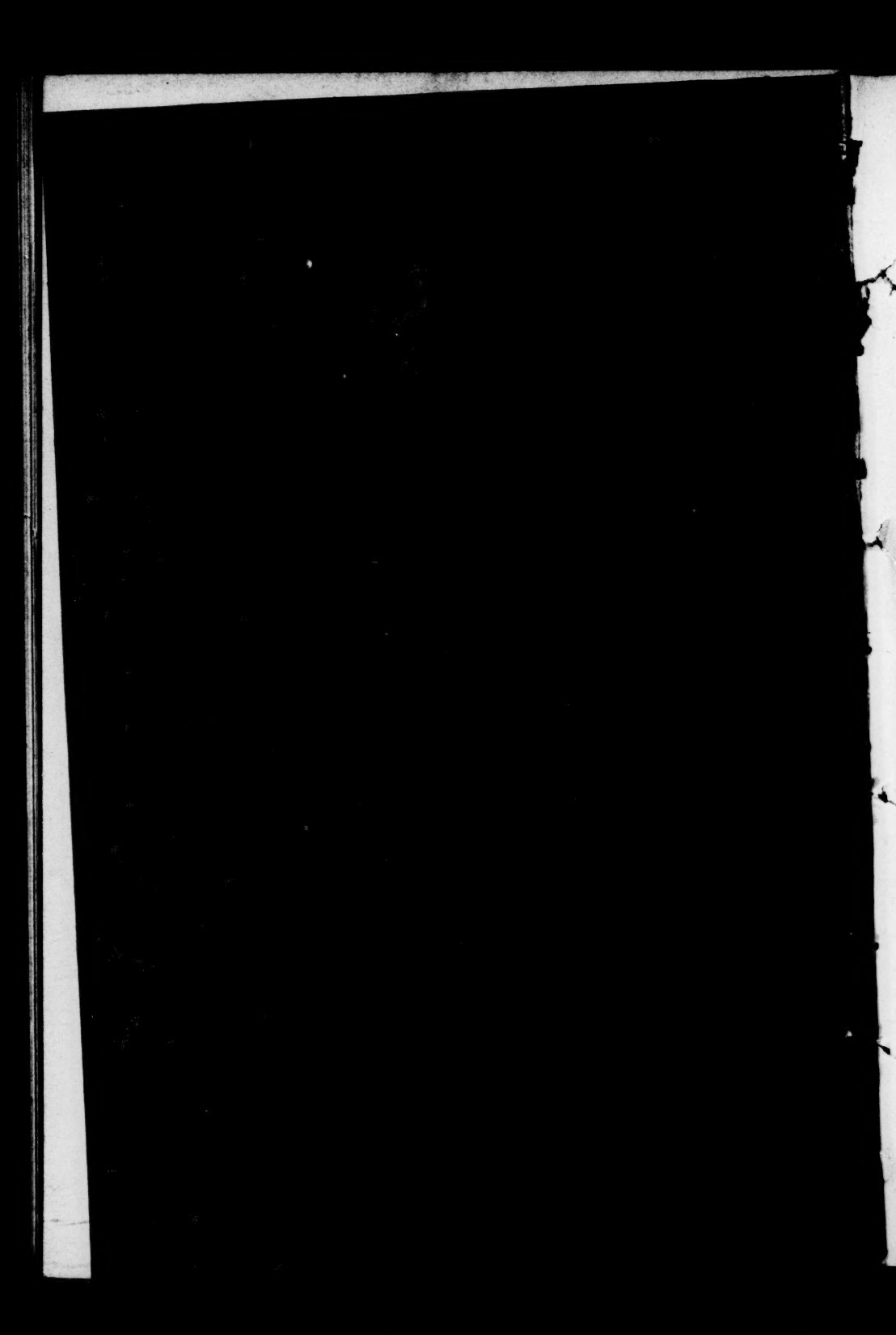
THE STEAM-TUG CLARA CLARITA, HER ENGINE—THE NEW YORK HARBOR PROTECTION COMPANY—APPELLANT,

vs.

AUGUSTUS M. COX, LEMUEL H. HOPKINS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 11, 1873.



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U. S. circuit court.

THE STEAM-TUG CLARA CLARITA, HER ENGINES, etc., The New York Harbor Protection Company, claimant and appellant, *adsm.*
AUGUSTUS M. COX ET AL., LIBELLANTS AND appellees.
} Filed Ap'l 23, 1872.

APOSTLES.

1 To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The libel and complaint of Augustus M. Cox, Lemuel H. Hopkins, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick , Sarah J. Fort, and G. Kohn, owners of the schooner Clara, her tackle, etc., against The Steam-tug Clara Clarita, her engine, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime; and thereupon the libellants allege and articulately propound as follows:

2 First. That this is an action founded on a maritime tort, civil and maritime, and that the said steam-tug Clara Clarita is now in this district and within the jurisdiction of this honorable court, and that the libellants are the true and only owners of the said schooner, her tackle, etc.

Second. That about eleven o'clock of the night of the 1st of August, 1870, while the said schooner Clara was lawfully lying at anchor in the North River, some three or four hundred yards off or abreast the foot of Thirtieth street, (where she had a perfect right to be,) being well and sufficiently officered, manned, equipped, and supplied, and having the light required by law to be shown by vessels lying at anchor, that is to say, a white light in the starboard fore-rigging, about twenty feet above the deck, she was carelessly and wrongfully run into and set on fire by a burning ferry-boat, which the steam-tug Clara Clarita was and had been attempting to tow from her dock at Hoboken to a place known as the Hoboken Flats.

That at the time of such collision and fire the night was clear, and the tide was flood.

Third. That the said tug-boat, when first discovered by those on board of the schooner, was in dangerous proximity to the said schooner; although there was abundant sea-room on all sides, was wrongfully attempting to take the said burning boat across the schooner's bows. That the burning ferry-boat, over which the tug had the exclusive and entire control, was wrongfully towed against and permitted to strike the bows of the schooner, where she hung for some time, setting fire to the fore-rigging, jibs, and the hull of the vessel. That such collision and fire was caused solely through the fault and negligence of those navigating and having charge of the tug-boat, in that she had no competent lookout properly stationed and faithfully attending to his duties, and was carelessly, negligently, and improperly navigated, in that she attempted to cross the schooner's bows when in such close proximity to her as to endanger her safety, and not through any fault or carelessness on the part of those in charge of the said schooner.

3 Fourth. That by reason of the facts above stated the schooner sustained serious damages, and the libellants believe and aver

that such damages, together with the demurrage or damages for the detention of the schooner in consequence of the collision and fire, will amount to the sum of seven thousand dollars or thereabouts.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore libellants pray that process in due form of law, according to the course and practice of this honorable court, may issue against said tug-boat Clara Clarita, her engine, tackle, apparel, etc., and that all persons claiming any interest in said steam-tug may be cited to appear and answer all and singular the matters so propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid and to condemn said tug-boat, and those intervening for their interest therein, in costs, and for such other and further relief in the premises as shall be just.

L. H. HOPKINS.

Sworn to before me this 9th day of September, 1870.
[L. S.] WILLIAM LINDSAY,
Notary Public, N. Y. Co.

OWEN, NASH & GRAY, *Proctors for Libellants.*
E. H. OWEN, *Advocate.*

[Indorsed:] United States district court. 23–418. Augustus M. Cox et als. vs. Steam-tug Clara Clarita, etc. Libel. Owen, Nash & Gray, proctors for libellants. Filed September 9th, 1870.

District court of the United States for the southern district of New York.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court. Filed the 9th day of September, 1870.

Whereas a libel was filed in this court on the ninth day of
4 September, in the year of our Lord one thousand eight hundred and seventy, by Augustus M. Cox, Lemuel H. Hopkins, and others, against The Steam-tug Clara Clarita, for the reasons and causes in the said libel mentioned, and praying that said steam-tug, etc., may be condemned and sold to pay the demands of libellants, and the said libellant and James M. Nelson, surety parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

L. H. HOPKINS.
J. M. NELSON.

Taken and acknowledged this 9th day of September, 1870, before me.
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James M. Nelson, party to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

J. M. NELSON.

Sworn to this 9th day of September, 1870, before me.

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the day of 187 .

Clerk.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States
5 court-rooms, in the city of New York, on Tuesday, the 13th day of September, in the year of our Lord one thousand eight hundred and seventy.

Present, the honorable Samuel Blatchford, district judge.

STEAM-TUG CLARA CLARITA, HER ENGINES, etc.,
asm.
AUGUSTUS M. COX ET ALS.

And now, Theodore Sharts, intervening as agent for the interest of George M. Woodward et als., in the said steam-tug, appears before the honorable court and makes claim to the said steam-tug, etc., as the same are attached by the marshal, under process of this court, at the instance of Augustus M. Cox et als.; and the said Theodore Sharts avers that he was in possession of the said steam-tug at the time of the attachment thereof, and that the persons above named are the true and bona fide owners of the said steam-tug, and that no other person is the owner thereof, and the said Sharts the true and lawful bailee thereof, as agent; wherefore he prays to defend accordingly.

New York Harbor Protection Company,
By THEODORE SHARTS, *Sec'y.*
G. DE F. LORD,
Proctor for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Theodore Sharts, being duly sworn, deposes and says that he resides in the city of Brooklyn; that he is the agent of the owners above named, and that the owners of said steam-tug reside in the cities of New York and Brooklyn, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said steam-tug, and that the said claim is true of the knowledge of this deponent, except as to the
6 matters therein stated on information and belief, and as to such matters he believes it to be true.

THEODORE SHARTS.

Sworn to and subscribed this 13th day of September, A. D. 1870, before me.

U. S. Commissioner.

(Indorsed:) Vol. 23, No. 418. United States district court for the southern district of New York. Steam-tug Clara Clarita, her engine, asm. Augustus M. Cox et als. G. De F. Lord, proctor for claimant. Claim of . Filed the 13th day of September, 1870.

[Respondent's costs.]

District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 22d day of September, 1870.

Whereas a libel was filed in this court, on the 9th day of September, in the year of our Lord one thousand eight hundred and seventy, by Augustus M. Cox et als. against the steam-tug Clara Clarita, her engines, etc., for the reasons and causes in the said libel mentioned, and praying that said vessel be condemned, etc., and the parties hereto hereby consenting, and that, in case of default or contumacy on the part of the cl'm'ts or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by Theodore Sharts, (on behalf of the New York Harbor Protection Company:) Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the 7 cl'm'ts above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

New York Harbor Protection Company,
By THEODORE SHARTS, *Sec'y.*
H. A. BURR.
GEORGE M. WOODWARD.

Taken and acknowledged this 13th day of September, 1870, before me.
JOHN A. OSBORN,
U. S. Commissioner.

As to George M. Woodward, September 22d, 1870.
GEORGE F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry A. Burr and George M. Woodward, parties to the above stipulation, being duly sworn, each doth depose and say, that he, said Burr, resides in the city of New York, and that he, said Woodward, resides in the city of Brooklyn; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.
H. A. BURR.
GEORGE M. WOODWARD.

Sworn to this 13th day of September, 1870, before me.
JOHN A. OSBORN,
U. S. Commissioner.

As to Woodward, September 22d, 1870.
GEORGE F. BETTS,
U. S. Commissioner.

Recorded the day of 187 .
Clerk.

District court of the United States for the southern district of New York. In admiralty.

Stipulation for value entered into pursuant to the rules and practice of this court.—Filed the 22d day of September, 1870.

Whereas a libel was filed on the 9th day of September, in the
8 year of our Lord one thousand eight hundred and seventy, by Augustus M. Cox et al. against the steam-tug Clara Clarita, her engines, etc., for the reasons and causes in the said libel mentioned; and whereas the said steam-tug is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel; and whereas the proctors for the libellants have consented that said vessel be discharged from custody on the claimants filing due claim thereto and executing stipulations for costs and value, the latter in the sum of ten thousand dollars, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or their sureties execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such that if the stipulators undersigned shall at any time upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to G. De F. Lord, esquire, proctor for the claimants of said steam-tug, abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

New York Harbor Protection Company,
By THEODORE SHARTS, *Secretary.*
H. A. BURR.
GEORGE M. WOODWARD.

Taken and acknowledged this 13th day of September, 1870, before me.
JOHN A. OSBORN,
U. S. Commissioner.

As to Woodward.
GEORGE F. BETTS,
U. S. Commissioner.

SEPTEMBER 22, 1870.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry A. Burr and George M. Woodward, parties to the above stipulation, being duly sworn, depose and say, that he, said Burr, resides in the city of New York, and he, said Woodward, resides in the
9 city of Brooklyn; that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

H. A. BURR.
GEORGE M. WOODWARD.

Sworn to this 13th day of September, 1870, before me.
JOHN A. OSBORN,
U. S. Commissioner.

As to Woodward.
GEORGE F. BETTS,
U. S. Commissioner.

SEPTEMBER 22, 1870.

Recorded this day of 187 .

To the honorable Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The New York Harbor Protection Company, sole owners of the steam-tug Clara Clarita, intervening in their own behalf, and answering the libel of Augustus M. Cox, Lemuel H. Hopkins, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick , Sarah J. Fort, and G. Kohn, against the said steam-tug, her engine, tackle, apparel, and furniture, allege and say as follows:

First. They allege that they are the sole owners of the said steam-tug Clara Clarita, and admit that she was at the time of filing said libel within the jurisdiction of this court; but they have no knowledge whether the libellants are owners, or the sole owners of the schooner Clara mentioned in said libel, and they deny each and every other allegation in said libel contained, except as the same coincide with the statement hereinafter made.

Second. They allege that the said steam-tug at the time of the occurrence stated in said libel, and for a long time previous thereto, had been kept and maintained by these respondents for the purpose of assisting vessels in distress, and particularly for the purpose of extinguishing fires on board of vessels in and about the harbor of New York, and that for that purpose she had been fitted and furnished with machinery, apparatus, and hose of great power, efficiency, and capacity,
10 which, together with the said steam-tug herself, were at all times kept ready for use wherever they might be required.

Third. They further allege that on the evening of the first day of August, 1870, a fire was discovered by the officers of said steam-tug, which had broken out upon the James Watt, a ferry-boat plying between New York and Hoboken, and lying at the time in her slip on the Hoboken side of the North River; that, immediately upon said fire being discovered, the said steam-tug Clara Clarita proceeded to the assistance of the said ferry-boat, and her officers and crew, under the direction, supervision, and employment of the officers and persons in charge of said ferry-boat, rendered such assistance as was in their power toward extinguishing the conflagration; that, notwithstanding all the efforts that could be exerted, it was found impossible to extinguish it, and the captain of the Clara Clarita, acting still under the direction and employment of those in charge of said ferry-boat, made fast a hawser to said boat and towed her out into the stream for the purpose of towing her a short distance up the river to the Hoboken Flats, where she could be beached in safety; and that this manœuvre was necessary at the time in order to prevent the fire from spreading to the wharves adjoining the slip where said boat was lying, and to other vessels moored at said wharves and in the vicinity.

Fourth. They further allege that at the time when the ferry-boat was thus towed out into the stream the fire was confined below the decks, and there was every reason to believe that she could be towed in safety to the flats above mentioned; and that every possible care and precaution was taken to secure the safe accomplishment of that object. But shortly after the boat had been dragged clear of the slip the flames suddenly broke out through the decks, and the hawser by which she was being towed was burned off and she floated adrift into the stream. That shortly before the Clara Clarita had started to tow the said ferry-boat out from the slip, several of the persons who had been employed on said ferry-boat, and who were strangers to these respondents
11 and not in any manner under their employment or control, came on board the Clara Clarita and remained on board

of her, rendering assistance to said ferry-boat until she sank as hereinafter stated; that immediately after said ferry-boat had broken adrift from the Clara Clarita as aforesaid, some of these persons, none of whom were employed by the respondents, went in a life-boat belonging to the ferry-boat and took a hawser and made it fast again to said ferry-boat, whereupon the Clara Clarita started again for Hoboken Flats with her in tow; that the said tug and her tow proceeded safely for some distance up and across the river, and would shortly have reached their destination, when the hawser was again burned away and the ferry-boat again swung adrift; that another hawser was again made fast to her by the same men as before, but the fastening pulled out or gave way, and then before it could be made fast the third time the ferry-boat drifted under the force of a flood tide and a southwest wind upon and against the schooner Clara, which thereupon caught fire before the hawser could be again made fast to the ferry-boat and she be dragged away.

Fifth. They further allege that at the time when said ferry-boat broke loose the last time the schooner was a considerable distance away from her; that the Clara Clarita was proceeding with all speed and with every precaution in a direction away from where said schooner was lying, and diagonally up and across the river toward the Jersey shore; that after the ferry-boat broke loose, as aforesaid, all haste was used and another hawser was gotten out and made fast to her by the same men as before, and she was towed clear of said schooner, but shortly afterward she filled and sank; and the Clara Clarita thereupon proceeded to the assistance of said schooner, and by means of the apparatus on board, and by the skillful and persistent efforts of her officers and crew, the flames were extinguished and the said schooner saved from total loss.

Sixth. The respondents have no sufficient knowledge as to where the said schooner was lying, or whether she had lights burning, as alleged in the libel, and therefore leave the libellants to their proof in
12 that behalf; but they deny that at the time of said accident she was well manned and equipped, and they allege that shortly before or immediately after the ferry-boat got afoul with the said schooner the officers and crew of the latter deserted and abandoned her; and they further allege that the movements of the burning boat were distinctly visible for a great distance, and that if the officers and crew of said schooner had exercised even ordinary precaution, skill, or diligence in the management of their vessel, they had ample and sufficient warning of the approaching danger to have easily avoided it; and that if the said tug-boat was not discovered by those on board of said schooner until she was in dangerous proximity, it was because of the negligence and want of care and attention on the part of those in charge of said schooner.

Seventh. The respondents further deny that the said collision or injury was caused by any negligence, want of skill, or attention on the part of those in charge of the Clara Clarita, and allege that it was, as far as they were concerned, the result of inevitable accident, the effects of which might, however, have been avoided by proper care, diligence, and precaution of those in charge of the schooner; and they also allege that if there was any carelessness or want of skill in any of the operations or manœuvres which preceded the occurrence of the said accident, the same was not chargable to these respondents or to any persons in their employ; and the respondents allege that during all the time above referred to there was a good and sufficient lookout on board the said tug-boat Clara Clarita.

Wherefore the respondents demand that the libel herein be dismissed with costs.

New York Harbor Protection Company.

THEODORE SHARTS, *Secretary.*

Sworn before me this 3d day of November, 1870.

WILLIAM P. DIXON, *Notary Public.*

(Indorsed:) United States district court. Augustus M. Cox et als. vs. The Steamer Clara Clarita. Answer. George De Forrest Lord, defendant's proctor, 45 Exchange Place.

13 United States district court.

AUGUSTUS COX ET AL.
vs.
THE STEAM-TUG CLARA CLARITA, ETC.

I hereby consent that C. Van Santvoord be substituted in my place as proctor for the claimants herein.

Dated October 10, 1871.

GEORGE DE FORREST LORD,
Proctor for Claimants.

At a stated term of the district court of the United States of America for the southern district of New York, held at the court-rooms in the city of New York, on Wednesday, the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy one.

Present, the Hon. Samuel Blatchford, district judge.

AUGUSTUS M. COX ET AL.
vs.
THE STEAM-TUG CLARA CLARITA, HER ENgine, tackle, etc.

On reading and filing the consent of George De Forrest Lord, esq., to the substitution of Mr. C. Van Santvoord as proctor for the claimants in this cause of The Clara Clarita, her engine, etc., it is ordered that said C. Van Santvoord be, and he is hereby, substituted in the place of said George De Forrest Lord as proctor for said claimants.

SAMUEL BLATCHFORD.

(Indorsed:) 23–418. United States district court, southern dis-
14 trict of New York. The Steam-Tug Clara Clarita, her engine, tackle, etc., ads. Augustus M. Cox, Silas C. Evans, et al. Consent of George De F. Lord, esq., for substitution in his place as proctor for the claimants of C. Van Santvoord, and order for substitution. C. Van Santvoord, proctor for claimants. Filed October 11th, 1871.

United States district Court. Before Hon. S. Blatchford. In admiralty.

THE NEW YORK HARBOR PROTECTION Company
vs.
THE SCHOONER CLARA, HER TACKLE, ETC.

AUGUSTUS M. COX ET AL.
vs.
THE STEAM-TUG CLARA CLARITA, ETC.

NEW YORK, *October* 24, 1871.

The above cause being called—for the libellant, The New York Harbor Protection Company, and the complainant, The Steam-Tug Clara Clarita, appears Mr. Van Santvoord.

For the libellant, Augustus M. Cox et als., and the complainant and schooner Clara, appears Mr. Owen.

Mr. Van Santvoord reads the libel of The New York Harbor Protection Company.

Mr. Owen, jr., reads the answer to the claimants.

Mr. Owen, jr., also reads the libel of Augustus M. Cox et al.

15 Mr. Van Santvoord reads the answer of the New York Harbor Protection Co.

WILLIAM T. FRANCIS, a witness, called on behalf of the New York Harbor Protection Company, being duly sworn, testified:

By Mr. Van Santvoord:

Q. Were you master of the Clara Clarita in August, 1870?

A. I was.

Q. What was the business of that boat?

A. Towing, and putting out fires.

Q. Was she fitted up with apparatus to put out fires?

A. Yes, sir; two large pumps and eight hundred feet of hose.

Q. Those pumps worked how?

A. By steam.

Q. Had she hawsers, for towing, on board?

A. Yes, sir.

Q. What was the size of those hawsers?

A. We had one seven inches, and we had three short hawsers of five inches or four and a half.

Q. What material were they made of?

A. Manila.

Q. Are those hawsers in use on tug-boats in the harbor of New York manila hawsers?

A. Yes, sir.

Q. Was she kept with her fires banked and ready to move?

A. Yes, sir; the fire was always banked and ready at any time.

Q. Where was her berth?

A. On the north side of Canal street dock, Pier 42.

Q. That is the pier of the Pacific Mail Steamship Company?

A. Yes, sir.

Q. Was she at that time with fires banked on the evening of August 1st, 1870?

A. She was.

Q. What crew had she on board?

16 A. Six men, all told.

Q. Who were they?

A. Myself, a wheelsman, one fireman, an engineer, and two deck-hands.

Q. What was the wheelsman's name?

A. John Mason. Edward Palmer was the engineer, William Cullen was one deck-hand, Patrick Gannon was another, and the fireman was Levi Anson.

Q. That was the whole force?

A. That was the whole crew.

Q. Were these men all on board when you were at the dock at Canal street?

A. Yes, sir.

Q. What first called your attention to the fact of there being a fire at this slip at Hoboken?

A. I was on the deck, and the night-watchman said there was a fire over in Jersey. He was on the end of the dock, and he came to let me know. I went on the dock and looked myself.

Q. Was this watchman attached to your boat?

A. No, sir; he was attached to the Pacific Mail Steamship Company.

Q. He first called your attention to what?

A. To the smoke over in Jersey.

Q. Did you take measures to go there?

A. We got ready as soon as we could. In probably five or ten minutes we went over.

Q. To where?

A. To the Hoboken ferry in Jersey.

Q. Did you find that boat was on fire there?

A. We saw smoke, but we could not tell where the fire was. When we landed at the dock, I sent the wheelsman to see where it was, and he found out and we went to it.

Q. He found that it was the James Watt?

A. Yes, sir.

Q. Where was she lying?

A. In the slip at Hoboken ferry.

Q. At that time was there any sign of fire that you saw?

17 A. No, sir; I could not see anything but smoke when we went over.

Q. You saw a smoke coming up?

A. Yes, sir; it was coming up in the gangway.

Q. Through an opening in the deck?

A. Yes, sir.

Q. No flames at that time?

A. Not that I could see.

Q. Did you get any directions from persons having charge of the ferry-boat?

A. Yes, sir.

Q. Who?

A. Mr. Chase and a gentleman I took to be the chief engineer of the fire department.

Q. Mr. Chase is the superintendent of the ferry company?

A. Yes, sir.

Q. Where was Chase at that time?

A. He was on the York end of the boat.

Q. That is, the New York end of the ferry-boat?

A. Yes, sir.

Q. With him there was a man you took to be the chief engineer of the Hoboken fire department?

A. Yes, sir.

Q. Were there other people there?

A. There were other people there.

Q. On the ferry-boat?

A. On the ferry-boat.

Q. Did they make any inquiry of you?

A. They asked me if I had hose and pump all ready, and I said I had; they said to pass them aboard, and I did so.

Q. They directed you to pass them aboard?

A. Yes, sir.

Q. Before you passed the hose aboard what did you do with your boat—where did you place her?

A. I left my boat and went on the end of the ferry-boat and got a line on her.

Q. The outer end?

A. Yes, sir.

Q. What part of the outer end?

18. A. I could not tell whether it was the starboard or port.

Q. Calling the outward end the bow?

A. The outward end would be on the starboard side.

Q. What was it you attached to on the ferry-boat?

A. An iron cleat.

Q. (By the court.) You fastened your hawser to an iron cleat?

A. Yes, sir.

Q. On what part of your boat was this hawser fastened?

A. It was at my bow-chock, fast to my forward bitts.

Q. After you had attached your boat by this hawser to the ferry-boat, then you passed the hose on board the ferry-boat?

A. Yes, sir.

Q. Who took the hose aboard?

A. My men partly; they all helped—my men and those that were on the ferry-boat.

Q. Did Mr. Mason have anything to do with it?

A. Yes, sir.

Q. After the hose was passed aboard, did you next throw water down the hold?

A. Yes, sir.

(Mr. Owen objects to the course of examination as leading.)

Q. How many streams did you send aboard?

A. Two.

Q. Through how many lengths of hose?

A. I cannot tell how many lengths. We had two streams—we might have had fifty lengths of hose.

Q. How many hose—how many nozzles?

A. Two.

Q. Two nozzles connected with the hose?

A. Yes, sir.

Q. Did you continue to work the pumps then, and throw water through the hose?

A. We worked the pumps until we found——

Q. Under whose directions?

A. Under the directions of the superintendent and this chief engineer, as I took him to be.

19 Q. How long did you continue this?

A. I cannot say exactly whether it was an hour or two hours.

Q. Where were you at the time of this——

A. I was on the ferry-boat deck and on board of my own boat, backward and forward.

Q. Where was this fire on the ferry-boat?

A. It appeared to be down in the hold, under the deck.

Q. From where you were could you see the progress of the flames, whether it was being extinguished?

A. No, sir; I could not.

Q. You know nothing of that except from report?

A. From report.

Q. Do you know of any proposition to scuttle the boat in the slip?

A. I heard somebody say something about scuttling, but they could not get under the guards to do it.

Q. Did you see the situation to know whether it was possible?
A. I don't think it was.
Q. Why?
A. It was too deep in the water to get under her.
Q. Could not be reached?
A. No, sir.
Q. Do you know at the time your hose was throwing water on board that vessel, water was being thrown there through hose from other engines and other vessels?
A. I knew there must have been water coming from somewhere, but I could not tell from where.
Q. You don't know about that?
A. No, sir; it was on the other end of the boat.
Q. Then what was the next order given to you?
A. The next order was to pull the boat out of the slip.
Q. By whom was that given?
A. That was given by the same parties.
Q. The superintendent of the ferry company and the chief engineer of the fire department?
A. One or the other; I cannot say for certain which one.
20 Q. Upon that what did you do?
A. We shifted out the line from aboard of us to aft to get my head clear of the rack, and then pulled her out. I changed the hawser from my boat's bow to my boat's stern.
Q. Then did you back?
A. Yes, sir; so as to clear my head of the rack.
Q. How was the wind?
A. Southwest.
Q. How was the tide?
A. Flood-tide.
Q. In pulling her out what course did you take?
A. I put the hawser in the starboard chock to cant her down the river, to clear the vessels lying above her on the river.
Q. What was that to do?
A. So that my boat would cant down the river quick.

By the court:

Q. Do you mean that you went with your bow out?
A. Yes, sir.
Q. The hawser was on your starboard side?
A. Yes, sir.
Q. Running along the starboard from aft the forward chock?
A. No, sir; about one-third of the way from aft.

By Mr. Van Santvoord, resuming:

Q. The other end of the hawser was on the ferry-boat?
A. The other end was fast aboard the ferry-boat.
Q. What course did you take in going out of the slip?
A. I made my calculation to pull her far enough to clear the vessels above. I could not tell exactly the course. It might have been southeast—it was more to the southward, probably.
Q. The object of that, you say, was to keep her clear?
A. To keep her clear of the vessels that laid at anchor. There were two or three barks and a lot of vessels that just laid above the ferry-slip.
21 Q. On which side?

A. On the Hoboken side, pretty well in. I wanted to pull her down the river to make sure, to get clear of them.

Q. What next happened in the progress as you were hauling your course down the river in your efforts to clear these vessels?

A. The ferry-boat burst out in flames fore and aft, and that burned the hawser.

Q. Then what became of the ferry-boat?

A. The ferry-boat drifted afoul of a bark before we could get hold of her again.

Q. One of these barks you have mentioned on the Hoboken side of the river?

A. Yes, sir.

Q. Did she set fire to that?

A. She set fire to the bark, but we got a line to her again and pulled her clear.

Q. How was that line taken to her again?

A. I think we went up to her ourselves and put a ladder over her bow, and one of the firemen, or somebody who did not belong to our boat, went aboard and made the line fast. We went bow on to the ferry-boat.

Q. After the line was made fast what then?

A. We started her again, and pulled her down to the southward and eastward, to clear the bark.

Q. Was that necessary?

A. Yes, sir.

Q. Why?

A. The tide was running so strong that we could not pull her any other way to get her clear. We had to pull her down the river and pull her across the tide.

Q. When you dragged this ferry-boat out of the slip did any person in charge of the fire department or the ferry-boat stay on board?

A. They all came on board of the boat who were on the ferry-boat.

Q. The superintendent of the ferry company and these other men?

A. Yes, sir.

22 Q. How long did they continue on board?

A. They continued on board until after the ferry-boat sunk.

Q. After you had pulled the ferry-boat clear of this bark and got the line to her, what course did you take?

A. I started to turn round and go up the river to tow her on to the flats. I went up the river and was turning her around to cross the schooner's bow.

Q. You started to turn around to go up the river. What happened then?

A. We parted. The hawser burned off again.

Q. How were you standing at the time?

A. Up the river.

Q. Did you get another line to her?

A. Yes, sir; we took a hawser to her then.

Q. How was it taken?

A. By a small boat belonging to the ferry company.

Q. A life-boat?

A. Yes, sir, a small life-boat.

Q. By whose men?

A. By either the ferry company's or the firemen; I cannot say which.

Q. That was the third hawser taken to her?

A. That was the third time.

Q. What was your course then?
A. I was turning then to go in toward Jersey, on the flats.
Q. Did anything happen to that hawser?
A. Yes, sir; it either pulled out or burned, I don't know which. We did not pull the hawser all the way in to see.
Q. Where was the ferry-boat in reference to this schooner?
A. When I saw the ferry-boat we were 200 or 300 yards from the schooner before I saw her.
Q. The schooner was as far off as that when the hawser parted?
A. Yes, sir.
Q. In what direction from the schooner?
A. The schooner was about, I should think, northeast, or about
23 north, when we parted the hawser, or when we got adrift from the ferry-boat.
Q. You were as far off as 200 or 300 yards?
A. We might have been that, or less, or probably more, for all I know.
Q. After this line parted what became of the ferry-boat?
A. The ferry-boat went on her own hook, getting afoul of the schooner before we could get the hawser to her.
Q. Do you mean she drifted?
A. Yes, sir; drifted by the wind and tide.
Q. By that time you say the ferry-boat was ablaze?
A. Yes, sir.
Q. Did it make it light?
A. Yes, sir; made a big light.
Q. How long a time was she in drifting up to the schooner?
A. It might have been five or ten minutes from the time we parted the hawser until she was afoul of the schooner.
Q. Was it five minutes?
A. Yes, sir, all of that.
Q. How was the schooner tailing?
A. She was tailing up the river with the flood-tide. The head was down the river.
Q. Apparently at anchor?
A. Yes, sir.
Q. Can you describe how the ferry-boat came in contact with the schooner?
A. The ferry-boat was going across the schooner's bow.

By the court:

Q. Going across the schooner's bow on which side?
A. From the schooner's port to the schooner's starboard. Her jib-boom catched something—the king-post on the ferry-boat—the stern of the boat, I should call it—the New York end. It caught some of the rigging. That caused her to swing around on the schooner's starboard bow. Before she got afoul of the schooner I had hallooed to the schooner to put her wheel to starboard and pay out their chain.
24 Q. Did she swing square across?
A. She did afterwards, right square across the schooner's bow.
Q. Did she set fire to the schooner?
A. Yes, sir.
Q. What part of her?
A. Her bowsprit and jib-boom and the bow of the schooner and fore-mast.
Q. While she was foul of the schooner did you get a line to her?

A. We got a line to her by a boat some way, and I pulled her away from the schooner, and pulling the schooner, too, in the first place.

Q. In what direction did you pull her?

A. I pulled her to the southwest.

Q. Toward the New York shore?

A. Toward the Hoboken shore. I pulled her off that way to clear her of the schooner. There was no other way of pulling her.

Q. And get her clear?

A. Yes, sir.

Q. What did you do with the ferry-boat.

A. She sunk.

Q. How far from the schooner?

A. It may have been 400 or 500 feet, or it may have been more. I cannot say for certain.

Q. What did you do after that?

A. I hauled in all the hawser I could and cut off the balance, and went to the schooner.

Q. To which side of the schooner?

A. The starboard side.

Q. Which way were you heading?

A. Down the river.

Q. What did you do?

A. I sent one of my men aboard of her, who grabbed by their line and made it fast, and a man went aboard with a hose at the same time.

Q. What did you do with hose there?

A. We played on the fire. We started the pump.

25 Q. How long were you playing on the fire?

A. I should think it was three or four hours.

Q. Had you any success there?

A. We put out the fire, and stayed until the captain was satisfied that the fire was out—and the mate also.

Q. What was the extent of the injury to her by the fire—what was burnt?

A. There was a good deal of work burned inside of the hold of the vessel, and the sails and bowsprit and jib-boom and foremast, and a good deal of her deck.

Q. Was anybody on that schooner's deck when you were near enough to see whether anybody was there?

A. I did not see anybody until we got alongside of the schooner.

Q. Until after the ferry-boat sunk?

A. Until after the ferry-boat sunk.

Q. Had a boat been to you before that?

A. Yes, sir; a boat had been to me with the captain of the schooner, and with some other men who wanted an axe to scuttle her.

By the court:

Q. When was this?

A. This was at the same time the ferry-boat was sinking.

Q. Before you got back to the schooner?

A. Before we went to the schooner. In the first place, the captain was in the boat, and came to see us when we were hauling the hawser in. in.

By Mr. Van Santvoord, resuming:

Q. That was after she had caught fire?

A. Yes, sir; after the schooner caught fire.

Q. He came to you and wanted an axe to scuttle the schooner?
A. Yes, sir.
Q. What next?
A. I told him to hold on, not to be scared; that we would take care of the schooner.
26 Q. When you came back to the schooner to put out the fire, was anybody on board the schooner?
A. Not that I could see.
Q. Did you see anybody afterward?
A. Yes, sir.
Q. When was that?
A. It was sometime afterward; I cannot tell how long.
Q. How long have you been a seaman?
A. I have followed the water since I was fifteen years of age.
Q. Upon what kind of craft?
A. Pretty much all kinds.
Q. What do you mean, sailing-vessels?
A. Sailing-vessels and steamboats.
Q. Schooners and sloops?
A. I never have been on sloops. The smallest I ever was on was a schooner, and from that up to ships.
Q. Was there any way in which this Clara, as she lay there, if she had anybody on deck, could have avoided this ferry-boat as she was floating adrift?
A. Yes, sir; all they had to do was to slip the chain along, and put the wheel hard a-starboard. Ten feet and she would have cleared her.
Q. How long would it have taken to slip the chain?
A. Not five minutes, if anybody was on deck ready.
Q. Would it have taken as long as that?
A. It would depend how hard it would have been to unshackle her.
Q. Was there time enough from the time this hawser of yours burned and parted, and she began to drift, before the ferry-boat was afoul of the schooner?
A. There was plenty to give her chain. I don't know if there was plenty of time to unshackle. There was plenty of time to give her ten or fifteen fathoms of chain.

Cross-examination:

By Mr. Owen:

Q. How long had you been in command of this tug-boat at that time?
27 A. Very near five years.
Q. Was she always engaged in that business?
A. That was from the time the Pacific Mail Steamship Company had her there for the purpose of using her for fires.
Q. Had you ever towed a burning boat before in the harbor of New York?
A. I towed a ship in from the sea that was afire.
Q. In the harbor of New York?
A. Yes, sir.
Q. Where did you drop her?
A. At quarantine.
Q. You never towed one before around the harbor of New York?
A. Not one on fire.
Q. (By the court:) You say she belonged to the Pacific Mail Steam ship Company?

A. She did at the first commencement, before the New York Harbor Protection Company bought her.
Q. When did they buy her?
A. They delivered her on the second day of June, 1870.
Q. The same year of the fire?
A. Yes, sir.
Q. The fire occurred on what day?
A. The first of August, in the night.
Q. How large was this boat?
A. She is one hundred and twenty-five tons.
Q. What is the power of her engines?
A. She has got two twenty-two-inch cylinders, square.
Q. Have you stated all the wrecking apparatus you had on board of her, in answer to the question asked you?
A. For which purpose?
Q. For the purpose of assisting in extinguishing fires, and in wrecking vessels.
A. I have stated all that was required there.
Q. Have you stated all that you had on board; had you anything else on board besides steam-pumps and hawsers?
A. Hose.
Q. And hawsers?
28 A. We had axes, and all such things as that.
Q. Any anchors?
A. Yes, sir; three of them.
Q. Did you have any chains?
A. Yes, sir.
Q. Did you have any chain cables?
A. Chains for the anchors.
Q. How long were your chains?
A. They may be fifty or seventy-five fathoms.
Q. What was at the end of the chain—hooks?
A. They went with shackles.
Q. How came you to come across; was it a voluntary movement on your part?
A. It was my business; it was what the boat was for.
Q. You had no interest in the ferry-boat?
A. I had no interest in anything except the boat.
Q. Did your company have any interest in the ferry-boat?
A. No, sir; not that I know of.
Q. Who was the pilot of your boat?
A. John Mason.
Q. Then you had an engineer?
A. Yes, sir.
Q. How many other hands?
A. A fireman and two deck-hands.
Q. Where is that engine—amidships, or where?
A. It is a little on the aft end of the boat, but nearly amidships.
Q. Is she a side-wheel boat?
A. No, sir; a propeller.
Q. How high was her guards around?
A. Her guards are very small, just a fender-piece around, about four inches wide.
Q. Your chocks, by which you towed, were amidships?
A. Our bitts are amidships; our chocks are on the side.

Q. Who did you see, when you arrived across the river, on the burning ferry-boat?

A. I saw no one first; I saw five or six altogether.

Q. Where did you see them?

29 A. On the York end of the ferry-boat.

Q. That is, the outer end?

A. That is, the outer end from Jersey City.

Q. Did you tender your services to assist them?

A. I did, after being asked whether I was ready.

Q. Was there any agreement in regard to compensation?

A. No, sir.

Q. How did you expect to be paid?

A. That was not for me to look after; the owners of the boat did that.

Q. After you offered your services, who replied to you?

A. Either Mr. Chase or the chief engineer; I do not know but both of them.

Q. They expected your services?

A. Yes, sir.

Q. Where were you lying, with reference to the burning boat, at the time? Had you then run your bow upon her?

A. We run our bow on one end of the ferry-boat—the outer end.

Q. You were in that condition when you offered your services?

A. We were doing that and offering our services together.

Q. How deep was the ferry-boat at that time in the water?

A. Her guards were a little more than half way down in the water, a little after that.

Q. What was the cause of the water sinking her so?

A. The water was in the hold of the boat.

Q. That came in consequence of the fire?

A. Of the water that was played in the boat.

Q. At that time, then, was she lower than usual in the water? Had she begun to sink, in other words?

A. She had begun to fill with water. The water made the boat go down.

Q. The water that sunk her was water that you threw in by the pipes?

The Court. Not water that he threw in.

A. The water that had come in had settled her.

Q. How much do you think she had settled below her water-line?

30 A. I do not know; but she had settled so far that we could not get a boat under her guards.

Q. Did she settle forward or aft?

A. I guess she settled bodily down; I should judge so; I could not see the other end.

Q. After this you got out two pipes, two nozzles?

A. Two streams of water.

Q. How were they injected into the hold—by the force of the steam-pump?

A. By the steam-pump and the hose attached to the steam-pump.

Q. How large a stream did your hose throw?

A. We have four-inch hose and inch-and-a-half or two-inch nozzles.

Q. Was there any other pump playing upon her at the time, or any other hose?

A. Not that I could see; I knew there was water coming from somewhere, but I could not tell where it was.

Q. It didn't proceed from your end of the boat?

A. No, sir.
Q. You were at that time at the end of the ferry-boat?
A. I was at the York end of the boat.
Q. How long did you play upon the boat?
A. It might have been an hour, and it might have been an hour and a half.
Q. How much water had you thrown into her?
A. I do not know.
Q. I did not know but you knew the power of your pumps.
A. No, sir, I do not.
Q. How much had she sunk?
A. She sank a considerable ways down. It was pretty hard for any one who was there to tell just how far she had sunk down.
Q. Was there any flame or fire observable there then anywhere?
A. I could not see any fire until we pulled her out.

Q. Was there any consultation in regard to taking her out of
31 the slip or scuttling her or sinking her there, between you and any person?

A. No, sir, there was no consultation at any time.
Q. Was there any conversation?
A. Nothing more than it was said to take her out; that it would not be best to sink her in the slip.
Q. Who said that?
A. Either Mr. Chase or the chief engineer, and I think both.
Q. Who did they mention that to?
A. I think to me.
Q. The object of taking her out was to keep her from sinking at the dock?
A. The object was to prevent her from setting other vessels afire.
Q. The fire was not visible then?
A. It was visible a very few minutes afterwards.
Q. Then, when you concluded to remove her, you took her out, as I understand you, turned your stern toward her?
A. We backed off; we took the line off and changed it. I had to back on her to get my boat in position to do anything.
Q. You commenced to haul on her stern foremost?
A. No, sir, I didn't; I took my line from the ferry-boat to my stern; I backed on that to cant my head from the ferry-boat.
Q. How was your bow pointing when you were beginning to haul her out?
A. About south-southeast.
Q. How would that head?
A. About down right off Governor's Island, pretty near.
Q. Your stern was then toward her?
A. It was toward the ferry-boat.
Q. How long were you engaged in starting her out before you got her out in the stream?
A. It was a very few minutes from the time we started before we had her out.

Q. How long was the hawser by which you attempted to tow her?
32 A. It may have been fifteen or twenty fathoms.
Q. Don't you know?
A. Not exactly.
Q. What was the size of it?
A. Four and one-half inches—its bigness around.

Q. How far was it from where that ferry-boat lay in the slip to the Hoboken Flats where you desired to beach her?

A. It may be a mile—three-quarters of a mile; it may be over that for all I know.

Q. How many vessels lay above you or above the slip before you rounded the point to bring her on those flats?

A. There were four or five.

Q. Don't you know? If you do not, don't say so.

A. I do not know exactly—there was a half-dozen yachts lay there; I cannot say, three—five or ten. There were two barks; that I do know.

Q. How far had you got into the river before you straightened up to go toward the Hoboken Flats?

A. I got out pretty well into the river—probably into the middle of the river.

Q. What for?

A. So as to have room to turn the boat around.

Q. You were towing her with your head down stream?

A. You asked me how far in the river I was, when I went to turn around.

Q. You first drew her off toward Governor's Island?

A. Yes, sir.

Q. Afterwards your way was in another direction. How far did you tow her down that way before you hauled round and undertook to tow her up to the flats?

A. We did not undertake to turn. The hawser burnt off.

Q. When you were towing down stream?

A. Yes, sir. We had not commenced to turn around in the river at all to go up the river.

By Mr. Van Santvoord:

Q. But when it burnt off the first time?

A. Yes, sir.

33 Q. What was abreast of you when your hawser burnt, on the New York shore?

A. We were abreast, I suppose, of Pier 46, a little above the Hoboken ferry, on the Hoboken side.

Q. Had you got very near the New York shore?

A. No, sir; we had not got near the New York shore; we were a very little ways from the end of the dock when it first burnt off.

Q. Had you any difficulty in approaching her the next time to make fast?

A. Yes, sir.

Q. What was the difficulty?

A. The difficulty was, it was pretty warm.

Q. Do you know who it was who next fastened the hawser the next time it was burnt off?

A. It was either the fireman or somebody made it fast.

Q. You gave the hawser?

A. Yes, sir.

Q. And told them to make it fast?

A. Yes, sir. I told them to make it fast at the best place they could.

Q. You do not know who made the hawser fast to the burning boat at that time?

A. No, sir.

Q. Where were you at that time?

A. On the upper deck of my boat.
Q. Where—in the pilot-house?
A. I could not be on the upper deck and in the pilot-house.
Q. Where was the fire chiefly when it broke out?
A. All over, on both ends and both sides.
Q. Where was your chain-cable at that time?
A. Of the anchors?
Q. The chains you had?
A. Down in the locker.
Q. Why did you not get one of them up?
A. The reason was that we could not handle them.
Q. Why?
34 A. There were not men enough to handle them, even if we had taken all that belonged to the ferry company; and another thing, even if we had put a chain there, if there had such a thing been as the chain being pulled out, how would we have got the chain there again?—would not the chain have been hot, or any iron cable?
Q. It would not have been so hot as to burn like the hawser?
A. I have seen chain pretty hot in running out of the hawse-pipe.
Q. Where were you when you came and made fast the second time?
A. I was on the upper deck of the boat.
Q. Where were you in the river?
A. When I made fast the second time the ferry-boat was under the bark's bow.
Q. You have not quite comprehended the question.
A. You asked me where I was when the ferry-boat parted by the hawser burning—she drifted under the bark's bow.
Q. Was she afoul of the bark when you made fast to her the second time?
A. Yes, sir.
Q. Did you see that she was in danger of getting afoul of the bark when she got loose?
A. I had an idea that she would.
Q. Did you go to the bark and give them a notification of danger?
A. They didn't want any. I saw men there.
Q. Did you render that bark any assistance to get out of the way of the burning vessel?
A. No, sir.
Q. You let the burning vessel float on as usual, and didn't render any assistance to prevent them from getting burned?
A. No, sir; I pulled the ferry-boat clear of her.
Q. While she was afoul of that bark, this second hawser was made fast, and you pulled her off from that vessel?
A. Yes, sir.
Q. Whereabouts in the stream did the vessel lie?
35 A. Somewhere about the Hamburg steamer dock, a very little ways above the ferry.
Q. That is a considerable way below Canal street?
A. It was over to Hoboken.
Q. How far in reference to the width of the river—how far out into the river?
A. I could not say exactly; but she was pretty close—closer than the law allows in shore.
Q. How far does the law allow?
A. Three hundred yards it used to be when I knew about it.
Q. How wide is the river there?

A. About a mile, I should think; or it may be a little more.
Q. When you took hold of her again, how did you head your vessel to it?
A. Down the river.
Q. To haul her off from that vessel?
A. Yes, sir; the flood-tide set her up.
Q. How long did you haul her down the river?
A. Till I got her clear.
Q. What did you do then?
A. I turned around to go up the river.
Q. How far did you go up the river before she burned the hawser again?
A. We were turning around to go on the flats with her.
Q. How near were the flats?
A. We were probably two-thirds of the way from New York to Hoboken.
Q. Then the hawser burned off again; how did she drift then?
A. Afoul of the schooner.
Q. How did she drift?
A. She drifted up.
Q. How far were you at that time from the schooner?
A. It might have been 300 yards.
Q. Did you consider the schooner was then in danger?
A. I did not. I thought the ferry-boat was going ahead of the schooner—was going across her bow.
36 Q. Did you go forward to the ferry-boat and try to do anything to keep her from doing any damage?
A. Certainly, I tried to get my boat in position.
Q. Did you try to get the schooner out of the way?
A. No, sir; I sung out to the schooner.
Q. When did you discover for the first time that the burning boat would come in collision with the schooner?
A. It might have been five or ten minutes.
Q. How far were they off?
A. About three hundred yards.
Q. Which was the nearer, your boat or the ferry-boat?
A. The boat was a little nearer the schooner.
Q. You could have got there first if you had put on steam?
A. If we had a propeller-wheel on sideways, we could have got there first.
Q. You didn't go forward to go to her?
A. I did when I got there.
Q. You didn't go forward to get to her?
A. I went to her as soon as I could get there, and got her off, after she got afoul.
Q. I think you misunderstand me.
A. No, sir, I don't.
Q. I asked you if you went to the schooner—the Clara?
A. While the ferry-boat was afoul?
Q. Yes, sir.
A. No, sir; I went and took hold of the ferry-boat, and pulled her away from the schooner.
Q. After this hawser was parted the second time, after you saw there was danger of the burning boat coming in collision with the schooner Clara, did you do anything toward saving the Clara before making fast again to the ferry-boat?

A. Nothing more than I halloed to pay away her chain and put her wheel hard a-starboard.

Q. How far were you from the burning boat at that time?

A. I might have been a hundred or a hundred and fifty feet.

37 Q. How far from the Clara?

A. I was a little further than that.

Q. How far had the burning boat drifted from the time she burned her hawser until that time?

A. She might have been five or ten minutes drifting. I was across the tide, and the boat was drifting across the tide. My boat was one hundred and twenty-five feet long, and it took some time to get my boat in position.

Q. After the hawser was burned did you shut off the steam?

A. Of course, we stopped and backed to.

Q. Why would you back if she was drifting ahead of you?

A. To get into position to get my boat there.

Q. How long did she lay afoul of the Clara before you got hold of her again?

A. She didn't lay but a little while; I could not say whether it was five minutes or ten minutes—less or more.

Q. What difficulty was there, when you saw her drifting up toward the Clara, in getting hold of the other end and pulling her back?

A. I should have to turn right around.

Q. What difficulty was there in anchoring the burning boat after you got into the stream?

A. I could not get there to anchor her.

Q. You could get there to make fast?

A. Very well; but I didn't know where her chains were, or her anchors were there, and I guess it would have been rather warm work to have anchored the ferry-boat.

Q. And it was warm work to tow a burning boat into another boat, and set her on fire. How far was it from where the Clara lay to where you took the ferry-boat aground?

A. We didn't take her aground at all; the ferry-boat took the bottom; that was the way she went.

Q. I mean that craft that you were hauling—the ferry-boat?

A. Yes, sir.

Q. You grounded her?

38 A. No, sir; she grounded herself.

Q. Would she have grounded if you had not hauled her out?

A. She would have grounded somewhere else.

Q. You didn't do anything for the schooner?

A. I told you what I did.

Q. You didn't do any thing else?

A. Yes, sir; put the schooner out.

Q. You didn't do anything until you got that good-for-nothing boat where she could take the bottom, did you?

A. I didn't until I cut the hawser.

Q. You could have taken hold of the Clara easily, and got her out of danger before the other boat?

A. No, sir.

Q. Why not?

A. I didn't have room to get there.

Q. The ferry-boat was not on all sides?

A. She was across her bow.

Q. She was not on her stern?

A. You don't usually get your vessels astern.
Q. You usually get vessels off any way you can when they are in danger?
(No answer.)

Redirect examination, by Mr. Van Santvoord:

Q. Whereabouts in the river was this Clara at that time?
A. I should think she was pretty near in the middle of the river, up about Thirtieth street.
Q. That was your idea at the time?
A. Yes, sir.
Q. Was your boat exposed to any danger when alongside of the Clara?
A. Yes, sir, I think she was; there was danger of us getting afire from the boat, and there was danger of their foremast and rigging falling down on us.
39 Q. After this boat parted this last hawser, and before the ferry-boat drifted up to the schooner, what were you doing?
A. I was trying to get my boat into position to get hold of her again.
Q. That was necessary to be done to get her around into position?
A. I did not turn around; I backed up and went ahead several times. It would save more time than to turn around.
Q. With all the dispatch you could use, you could not get a line on her until she was afoul of the schooner?
A. We got the line to her with a small boat.
Q. Was there anything else you could do to keep her off the schooner Clara?
A. No, sir; we did all that was possible to keep her clear.
Q. After you got her off from the Clara, then you attempted to tow the ferry-boat on the flats?
A. Yes, sir.
Q. That was what you was doing at the time the ferry-boat sunk?
A. Yes, sir.
Q. What sunk the ferry-boat?
A. The water that was in her.
Q. And the progress of the flames?
A. Yes, sir.

Recross-examination, by Mr. Owen:

Q. What was the reason you could not get up to that boat except by backing around?
A. I might have got to her any way, but I took the shortest way.
Q. You could have approached her any way?
A. If I had turned around it would have been as long again, probably.
Q. (By the court.) You had to approach her from the windward?
A. Yes, sir.
40 Q. And pretty strictly to the windward?
A. Yes, sir; I found it pretty warm on that upper deck all that time.
Q. Where were the men all that time?
A. They were on the after deck most of that time, attending to their business, and one was in the pilot-house.

Redirect by Mr. Van Santvoord:

Q. How soon did you get back to this burning vessel after the ferry-boat sank?

A. Just as soon as we could. We cut our hawser from the ferry-boat and went right away to the schooner.

Q. You didn't wait to haul the hawser in?

A. No, sir; we hauled in all we could, and we cut it on the aft rail with an axe.

Q. How did you say you were standing at the time of the last parting of the hawser, before the drifting of the ferry-boat on the schooner?

A. We were standing about southwest, going into the flats.

Q. Toward Hoboken Flats?

A. Yes, sir.

Q. Just above Castle Point?

A. Yes, sir.

Q. Then the ferry-boat was something nearer to this schooner than the tug-boat was?

A. Yes, sir; we were on the other side of the schooner; we were on the westward side of the schooner, across the schooner's bows, very near.

Q. But in reference to the north and south line from the schooner, where did the ferry-boat stand before your line parted the last time?

A. We were angling the river, heading southwest.

Q. The starboard side of the ferry-boat was toward the schooner?

A. The starboard side of the ferry-boat that was going ahead.

Q. Below the schooner, standing across when this line parted?

41 A. Yes, sir.

Q. And of that distance from each other—about three hundred yards?

A. Yes, sir.

Adjourned to Wednesday morning, at eleven o'clock a. m.

United States district court. Before Hon. S. Blatchford. In admiralty.

THE NEW YORK HARBOR PROTECTION COMPANY
vs.
THE SCHOONER CLARA, HER TACKLE, ETC.

AUGUSTUS M. COX ET AL.
vs.
THE STEAM-TUG CLARA CLARITA, ETC.

NEW YORK, *October* 27, 1871.

Trial resumed.

WILLIAM T. FRANCIS, a witness, being recalled on behalf of libellants, further testifies as follows:

By Mr. Van Santvoord:

Q. You stated that you desired to correct some statement as to the direction of the Clarita and the ferry-boat at the time the hawser lost hold of her for the third time?

A. Yes, sir; I said we were heading about southwest when we were going across the schooner's bow to the westward the third time the hawser parted. Instead of that we were heading to the northward of the west.

42 Q. (By the court.) When the hawser parted the third time, as you were coming across the schooner's bow?

A. Yes, sir.
Q. At the time the hawser parted the third time how did the schooner bear to the Clarita?
A. I should think about northeast.
Q. How did the schooner bear from the ferry-boat?
A. When the hawser parted, it might have been to the westward of northward, or it might have been westward.
Q. How far off?
A. I should think about three hundred yards.

By the court:

Q. What was?
A. The ferry-boat from the schooner.
Q. Do you mean three hundred yards between the ferry-boat and schooner?
A. Yes, sir.

By Mr. Van Santvoord, resuming:

Q. At the time that hawser parted the third time from the boat did you observe whether the ferry-boat had settled some in the water?
A. Yes, sir; I think she had.
Q. And was she enveloped in flames at the time?
A. Yes, sir, fore and aft.

Cross-examination, by Mr. Owen:

Q. You say that the schooner bore from the tug northeast; how many points, and from which bow?
A. She was off our starboard quarter, nearly.
Q. You had passed her line?
A. We had passed the schooner.
Q. And had the ferry-boat passed her bow?
A. No, sir; if she had passed her bow she would have been clear of her.
Q. What was the length of the hawser you were towing by?
A. It might have been 35, 40, or 50 fathoms; I cannot tell exactly; it might have been less than that.
43 Q. At the time when she bore northeast, you had still hold of the burning boat, had you not?
A. No, sir; when the hawser parted she went off.
Q. How did she bear from you when the hawser parted the last time?
A. I have just stated what it was.
Q. You had got so far to the northward that she bore off about your starboard quarter?
A. We had got to the northward and westward.
Q. Let me ask you here, did you use the same hawser each time?
A. No, sir; we used two different hawsers.
Q. When did you put the new hawser on?
A. The third time—the big one.
Q. Was that a heavier hawser than the others?
A. Yes, sir.
Q. Was it newer?
A. I don't think it was newer; it was a new hawser. They were all new.
Q. How much larger was it than the other?
A. One was 4½ inches and the other was 7.
Q. Did you have that hawser on board the tug at the time you first made fast on board the ship?

A. Yes, sir.
Q. Why did you use the new hawser?
A. Because it burned the others off, and it was the handiest and the longest.
Q. How near the ferry-boat did the hawser burn off?
A. That is more than I can say.
Q. (By the court:) You mean that by burning, the first one had got too short for you?
A. It was the handiest to get it out. After we had got the two out, I sent out the big hawser; it was a very limber rope.

DANIEL B. HALEY, a witness called on behalf of the New York Harbor Protection Company, being duly sworn, testifies:

44 By Mr. Van Santvoord:

Q. Were you mate of the schooner Clara at the time of the burning of this ferry-boat in August, 1870?
A. I was in that capacity.
Q. How long had you been in her service as mate at that time?
A. I joined her, I think, in July, about the 9th or 10th; I would not be positive.
Q. (By the court:) A month before?
A. About a month before.
Q. Before that, had you been a seaman?
A. Yes, sir.
Q. For how many years?
A. I commenced going to sea in 1835 or 1836.
Q. In what vessels or class of vessels?
A. Mostly in schooners—fore and aft vessels.
Q. Engaged in the coasting trade?
A. Most of the time.
Q. Schooners of the class of the Clara?
A. Smaller and larger—commonly called coasting-vessels.
Q. Where had that schooner come from at this time?
A. From Georgetown.
Q. Loaded with what?
A. With coal.
Q. Did she discharge her cargo?
A. Yes, sir.
Q. Where?
A. I believe they said at the foot of Thirty-second street. I believe that is what they call the depot there.
Q. After discharging it was she brought to anchor off in the stream?
A. Yes, sir.
Q. (By the court:) Was she empty?
A. Yes, sir.
Q. Before the ferry-boat was afoul of her there, was there any anchor watch set on the deck of the schooner?
A. No, sir.
Q. Where was the captain and crew at the time?
45 A. At the time the fire occured?
Q. At the time the vessel first got afoul before she was burning?
A. The captain and myself and the steward were in the cabin; I could not say what part of the ship the balance of the crew were in, but to the best of my knowledge and belief two were forward in the forecastle, and one forward in the amidships house.

Q. (By the court:) You and the cook and the captain were in the cabin?

A. Yes, sir.

Q. And the rest, so far as you know, were in the forecastle?

A. Yes, sir; so far as I know.

Q. Would you know if any anchor watch had been set on that vessel?

A. I presume I would; being mate of the vessel, I would be the one to order an anchor watch.

Q. You were the one to do it, if it had been done?

A. Yes, sir.

Q. Did you come out on deck?

A. I went out on deck as the steamer struck the schooner.

Q. What brought you out?

A. The noise of the crash under the bow—the jar.

Q. Did anybody else come out with you; where was the captain?

A. The captain went out right ahead of me.

Q. Did he come out before this crash on the bow?

A. I cannot say that he did, because I was very close to him; we went out as near together as we could get out, but he went out ahead.

Q. With what scope of chain was she anchored?

A. In working an anchor in the tide, I generally use from eighteen to twenty fathoms along in the night; I could not say whether there was more or less.

Q. At what chain was she anchored?

A. The port chain.

Q. Was that the working chain?

A. Yes, sir.

46 Q. With that scope of chain out, could she have been sheered in the tide, if anybody had been on deck to do it?

A. She could have been sheered some.

Q. How much?

A. In that depth of water, I suppose she could have been sheered two rods, or thereabouts.

Q. Could the chain have been slipped?

A. Yes, sir; it could.

Q. How long would it have taken to have slipped the chain—the anchor chain, I mean?

A. From three to six minutes; I could not tell exactly.

Q. Had she scope enough of chain to admit of its being run out, without slipping the cable?

A. To have cleared the burning boat?

Q. If anything had been approaching?

A. If she had not been too far toward her; we had sixty fathoms of chain.

Q. You stated that it would have taken from three to six minutes to have slipped the chain?

A. It would have been the same thing as running it all out.

Q. When you came out on deck who did you see on deck—anybody?

A. I could not say positively; I found the crew after I had got forward—some of them; I could not say which ones they were.

Q. When you came out had any part of the ship got afire from the burning ferry-boat?

A. I do not know as any part of the ship had, but I think by the time we got forward some of the head-rails were afire.

Q. Did you or any one leave the schooner in a boat, after the ferry boat had got clear?

A. I will not say whether I left before she got clear or afterward; we left immediately after the schooner took fire, but I will not say whether the ferry-boat was clear or not.

Q. Where did you go in this boat?

A. We went alongside of the protection boat.

Q. What did you go for?

47 A. We went to get clear of the fire.

Q. Did you ask for an axe?

A. I asked for an axe.

Q. For what purpose?

A. To scuttle the ship.

Q. What was the reply?

A. They said for us to go back, that they would save the vessel.

Q. Did they afterward come to the vessel?

A. Yes, sir.

Q. Did they throw water on the fire?

A. Yes, sir.

Q. Did they put it out?

A. They put it out.

Q. Was the captain with you in the boat?

A. Yes, sir.

Q. What progress had the fire made before the tug came back to the schooner to put out the fire?

A. I could not say positively what progress it had made.

Q. Can you say what had burned?

A. I cannot say. When we got back aboard again, from the tug, she was literally all afire, forward.

Q. That is the foresails and fore rigging?

A. The fore rigging—foremast—the vessel was all on fire—jib-boom, bowsprit, and headstay.

Q. Was there anything to prevent the destruction of the vessel if the fire had not been extinguished?

A. I don't think there was.

By the court:

Q. You had no axe on board?

A. No, sir; we had broken our axe, the day before, in the afternoon.

Q. You had nothing to scuttle her with?

A. No, sir; not that I am aware of.

By Mr. Van Santvoord, resuming:

Q. Have you any idea of the extent of the injury that the schooner sustained in this burning?

48 A. Yes, sir; I have some idea; but I have no idea what it cost. I did not pay the bills.

Q. Do you know what it cost from any statement of the owners of the vessel—the claimants here?

A. I do not know that I ever heard a full statement, and what I have heard I have not charged my memory with.

Q. What was the tonnage of this vessel?

A. That I could not tell you, as to the register; but I could tell you her capacity of carrying tons.

Q. What was that?

A. I think 355 tons was her capacity, dead weight.

Q. Do you know where she was built?
A. No, sir; I cannot say that I do.
Q. She was a fore-and-aft schooner?
A. Yes, sir; a fore-and-aft schooner.
Q. How many decks had she?
A. Two decks.
Q. She was a double-decker?
A. Yes, sir.
Q. That is, a deck in the hold below the main deck?
A. We call the lower deck the main deck, and the upper deck we term the poop deck.
Q. When you say she was a double-decker, you mean she had a poop deck, and the main deck lower than the poop deck?

By the court:

Q. Did the poop-deck run all the way fore-and-aft?
A. Yes, sir.
Q. Was she a two-masted or three-masted schooner?
A. Two-masted.

By Mr. VAN SANTVOORD, resuming:

Q. Are you competent to estimate what her value is? (Objected to.)
A. No, sir; I am not competent to judge.
Q. Do you know, from a statement of her owners, what her value was?
49 A. I do not think I ever heard them make a statement of what her value was. If I ever heard, I don't recollect.
Q. Do you know what the cost of the captain's fourth of her was?
A. I think I heard him say what it cost, but I will not say positively.
Q. How much?
A. I think I heard him say $4,500, but I am not positive.

Cross-examination, by Mr. Owen:

Q. When you came on deck how did the burning boat bear from you?
A. When we came on deck she was afoul of the schooner, under the bow.
Q. How was she heading, in reference to her motion?
A. I do not know as she was heading at all. At the time she was afoul of our bows they pulled her to the westward.
Q. What portion of her was afoul?
A. I could not say.
Q. About amidships?
A. I could not say whether about amidships, one-third or one-quarter.
Q. Was she nearly square across your bow?
A. That I could not tell you.
Q. Did you see the tug at that time?
A. I suppose I saw the tug in a minute or so after I saw the boat.
Q. How did the tug bear from you?
A. She was on her starboard bow a little; I could not say how she bore particularly.
Q. How far off, do you think?
A. Perhaps she might have been 30 or 40 yards. I could not say positively.
Q. How was she heading?
A. That I could not tell you.
Q. Do you know the depth of water where you lay?

A. Not positively; I did at the time, but I don't recollect now.
50 Q. How would you sheer a vessel as she lay by the use of her rudder two rods?
A. In the length of the chains and by the help of the tide.
Q. How would you put her wheel?
A. I should put her wheel a-starboard—the way to clear us as we were pulling to the westward.
Q. How would that have canted your head as you lay at anchor?
A. That would have thrown the stern to the westward and the head to the eastward.
Q. Just as if you were going forward?
A. Yes, sir.
Q. Had you used any portion of the chain except what was now on deck, during the time you had been connected with the schooner; had you ever run the whole out?
A. Not that I know of.
Q. Where was the balance?
A. The balance was in the chain-locker.
Q. On the deck?
A. Abaft the windlass—on the lower deck.
Q. Don't you know there was a person left on the deck that night?
A. I am positive there was not.
Q. Why not; have you any reason for it?
A. Because it was not customary to keep an anchor-watch in that position. It is very seldom kept unless in a case where we apprehend danger from wind or weather.
Q. How long did the ferry-boat remain afoul before she was pulled off by the tug, as near as you can state?
A. There was such confusion about our getting in the boat that I do not know, but perhaps two or three minutes, more or less; I cannot say positively.
Q. Did you go to the tug before the ferry-boat had hauled off? Was the ferry-boat afoul of the vessel when you went off?
A. I could not say whether they had got her clear or not at the time we left for the boat.
Q. Whom did you see on the tug when you reached it?
51 A. I could not say whom I saw.
Q. Whom did you ask for the axe?
A. I didn't ask any one particularly; I only asked for an axe.
Q. They didn't give it to you?
A. Yes, sir, they gave it to us.
Q. Then did you return to your vessel?
A. They told us to go back, that they would put the schooner out; we didn't return until they said they would.
Q. Where was the rest of the crew at the time the captain went for the axe?
A. They were in the boat with us.
Q. All in the boat?
A. Yes, sir.
Q. You all went back to the vessel?
A. Yes, sir, we went back to the vessel?
Q. Did you go aboard of her?
A. Yes, sir.
Q. Were you all aboard when the tug came to your assistance?
A. I will not say that we were aboard, but I think we got aboar l

simultaneously. I think those on the tug were getting aboard at the same time.

Q. You laid around the vessel?

A. Yes, sir.

Q. How long do you think it was after you asked for the axe before the tug came to your assistance?

A. Only a short time; I could not say exactly—perhaps five or ten minutes.

Q. What did you see when she came back?

A. She made fast alongside. I think she started streams before she got to us and made fast on our starboard side.

Q. They then threw water?

A. Yes, sir.

Q. How long was she engaged in putting the fire out?

A. I think she staid by us two hours, perhaps three: I don't know exactly.

Q. Was there any other boat that assisted to put the fire out?

52 A. Yes, sir.

Q. What one?

A. That I cannot say.

Q. What kind of a one?

A. A ferry-boat.

Q. Do you know what she did?

A. She threw a stream of water. I don't know how much. I cannot tell what her name was.

Q. About what time did she come to your assistance, before or after the tug-boat?

A. I cannot say. I do not think there was much difference.

Redirect examination:

Q. Who composed the whole crew of the Clara?

A. There was the captain, myself, the steward, and three sailors.

Q. What was the captain's name?

A. Cox.

Q. Augustus Cox?

A. I believe, Augustus Cox.

Q. What was the steward's name?

A. I cannot tell you.

Q. Do you know the names of the sailors?

A. I know the name of one man. He went by the name of Tom Savage. The other two came aboard that day. They are Dutch; in fact, I do not know whether they had any names in English.

Q. Was not one a Portuguese?

A. I could not say whether they were; I could not understand what they said. They talked very little Englsh.

Re-cross-examination:

Q. I want to know whether you had any light set that night.

A. Yes, sir, we had a light.

Q. Where was it?

A. In the fore-rigging.

Q. What time did you turn in that night?

A. I think about ten o'clock. I can't say positively.

53 Q. Did you get to sleep before you were called up?

A. I was not called.

By the court:

Q. You were sleeping at the time of the crash?
A. Yes, sir.
Q. Did the crash occur before you got on deck?
A. Yes, sir.

JOHN M. MASON, a witness on behalf of the New York Harbor Protection Company, being duly sworn, testifies:

By Mr. Van Santvoord:

Q. What is your occupation?
A. A seaman.
Q. Were you one of the crew of the tug Clara Clarita?
A. I was.
Q. In what capacity were you employed?
A. Wheelsman, at that time.
Q. At the wheel at the time the tug went over?
A. I held the position of wheelsman aboard the boat at the time.
Q. Were you on the tug before she left her berth, at the foot of Canal street, on the other side of the river?
A. Yes, sir.
Q. Had you seen smoke there, and did you know what it was that called the boat over there?
A. I saw smoke, but I could not tell what it was.
Q. Did you steer the boat over there?
A. No, sir, I didn't steer the boat all the way. I was on the deck, getting the hose ready, and part of the time the captain was at the wheel.
Q. Did you discover where the fire was?
A. I discovered when we got there.
Q. Where did you discover it was?
A. When we got over there, we landed at the end of the dock, just above the ferry-slip. I went on the dock to find out what was afire. A boy on the dock told me it was a boat in the Christopher street slip.
Q. Did you follow up that information?
54 A. I then went back to the boat and told the captain where it was.
Q. Then what was done?
A. I then went around, to get at it, down to the New-York end of the ferry-boat.
Q. Was a hawser taken to attach to the ferry-boat?
A. Yes, sir.
Q. With the other end on the tug?
A. Yes, sir.
Q. To what part of the ferry-boat was the hawser attached?
A. It was on the starboard bow, calling the York end of the ferry-boat the bow.
Q. Where was the end on the tug?
A. The other end was made fast to our bits.
Q. At the time she went up to the ferry-boat?
A. Yes, sir, our forward bits.
Q. Where was the bow of the tug?
A. It lay between the rack of the slip and the ferry-boat's bow.
Q. Do you know whether the hose was taken on board the ferry-boat from the tug?
A. Yes, sir, two lengths.

Q. Did you assist in doing that?
A. I did.
Q. What was done with the hose?
A. It was taken along in the amidship-gangway, the wide gangway, what they call the horse-gangway, by one of the engineers of the fire department. (Objected to unless the witness knows that the person was an engineer of the fire department.) I suppose he was an engineer. He was dressed in fireman's clothes, had on a white hat, and had a trumpet. I took him to be engineer.
Q. You took the hose on board the boat?
A. Yes, sir.
Q. Which part of the boat was the fire in?
A. Down below the deck, in the hold.
Q. Did you continue to throw water down in the hold there?
55 A. Yes, sir.
Q. For how long?
A. Probably half an hour. It may be more.
Q. Then what was done afterward? What did the tug do?
A. I got my orders to take the hose over aboard the ferry-boat—take them aboard of her bow—that they were going to pull the ferry-boat out.
Q. What did you do?
A. After we got the hose on board I went up and took down some awning-stanchions that were standing aft, to get them out of the way of the hawser; the awning-stanchions and ridge-pole, and pole where the awning had been up.
Q. What was the next thing done by the tug?
A. The tug, in the meantime, had moved her bows out clear of the ferry-rack, so that she could get out by means of the hawser made fast to her, and got headed out in the river. I then went forward and took the wheel.
Q. What then?
A. We proceeded then to pull the ferry-boat out, and got her started. The flames broke out all over apparently, amidships and under her guards.
Q. Which way was the wind; that is, in what direction?
A. Southwest.
Q. What was the direction of the tide?
A. The tide was flood.
Q. What course did the tug take in hauling the ferry-boat out of the slip?
A. About southeast.
Q. Why was that?
A. So as to pull her down against the tide, to clear some barks that lay above the ferry-slip.
Q. What happened while she was hauling the ferry-boat?
A. The flames burnt the hawser off. The ferry-boat then drifted afoul of the bark.
Q. What did you do when you saw her drift afoul of the bark?
A. As soon as we got our lines in that had been burnt off, and got them on the tug, we went to the ferry-boat and got another line to her.
56 Q. Did you lose any time in going to the ferry-boat?
A. Nothing more than was actually necessary to get the lines in from overboard, so that they would not disable the boat.
Q. Did you haul the ferry-boat off the bark?

A. Yes, sir; after we got a hawser to her the second time, we pulled her clear of the bark.

Q. Which way did you pull her?

A. We pulled her down in about a southeasterly direction, to get her clear of the bark.

Q. Was that necessary?

A. Yes, sir.

Q. After you had pulled her clear of the bark, what then did you do?

A. We then hauled around and headed up the river with the wind and tide toward Hoboken Flats.

Q. What happened next?

A. The hawser burned off again.

Q. That was the third time it burnt?

A. It was the second time.

Q. What next did you do?

A. We got the hawser to her again.

Q. Who took that third hawser?

A. That I cannot say. I saw some men in the boat, but I don't know who they were. I didn't have a chance to know.

Q. Was it taken in a life-boat?

A. A life-boat, I think, that belonged to the ferry-boat.

Q. Do you know who the men were—where they were from?

A. They came aboard of us from the ferry-boat before we started from the slip.

Q. Do you know how this last hawser happened to get off—how it parted?

A. The last one?

Q. Yes, the third time?

A. I don't know how it got adrift.

Q. You don't know whether it burnt off or pulled off?

57 A. No, sir; I don't know how any of them—I could not swear to any of them, because I didn't see the hawsers. I was in the pilot-house.

Q. At the time this hawser separated the last time, how was the tug and ferry-boat heading?

A. It might have been west, or it might have been a little to the northward of west. She was then standing across the river, toward the flats.

Q. What was the bearing of this schooner at that time—at the time the hawser parted the third time?

A. About southeast.

Q. The schooner southeast? How was the schooner bearing toward the tug and ferry-boat?

A. About northeast.

Q. The schooner was north of the tug?

A. Yes, sir.

Q. How was the ferry-boat?

A There was not a great deal of difference. There might have been a half point.

Q. How far off was the schooner?

A. I should judge two hundred and fifty or three hundred yards.

Q. When the hawser parted the third time what happened to the ferry-boat?

A. The ferry-boat went drifting up the river, and drifted afoul of the schooner.

Q. How long a time was she drifting up?

A. It might have been eight or ten minutes and it might have been more.

Q. Have you been a seaman on schooners?

A. Yes, sir.

Q. Brigs, and on what other vessels?

A. Nothing out of New York, but most all eastern schooners.

Q. What class?

A. Fore-and-aft schooners—the same class as the Clara.

Q. For how many years—what experience have you had?

A. I have been following the water for twenty years. I was some four years on schooners.

58 Q. Could that schooner where she lay at that time have been sheered?

A. I think she could.

Q. Could the cable have been slipped?

A. Yes, sir.

Q. If there had been anybody on the deck when the ferry-boat began to drift was there time to have sheered, or to have slipped the cable, so as to have cleared the ferry-boat?

A. Yes, sir; there was plenty of time.

Q. What did the tug do after the ferry-boat broke adrift; did she go to her?

A. We went after her again and got hold of her.

Q. Did she get hold of her again?

A. Yes, sir; we got a hawser on her again.

Q. Where was the ferry-boat at the time she got hold of her again?

A. Lying across the schooner's bow.

Q. Had any part of the schooner been afire?

A. Yes, sir.

Q. What part?

A. The jib-boom, the bowsprit, the head-slings, the fore-rigging, and the foremast.

Q. Why did you not get hold of the ferry-boat sooner than you did?

A. We got hold of her as soon as we could. We used all our exertions to do it.

Q. After you got hold of her the second time did you haul her off?

A. Yes, sir.

Q. In what direction did you pull her in hauling off?

A. The last time when we pulled her clear of the schooner, I think we pulled her about southwest—that is, a little down the river, in toward the Jersey shore, the boat was heading.

Q. After you pulled the ferry-boat off what did you do with her?

A. We started in with her into the flats, and towed her a short distance, when she sunk.

59 Q. After that, what was done by the tug?

A. We then got our hawser from her and went to the schooner and put the fire out.

Q. Do you recollect of a boat's coming to the tug, and inquiring for an axe?

A. Yes, sir. I heard some one hail the boat and ask for an axe.

Q. What answer was given?

A. Some one answered that if they would go back to the schooner, the schooner would be all right; that we would take care of her. I think that was the expression, that we would take care of the schooner.

Q. Was that some one on the tug?

A. I think the captain made use of that expression.

Q. At the time the ferry-boat was drifting up toward the schooner, what was the ferry-boat's condition?

A. She was all in flames.

Q. Did you notice whether there was any light in the rigging of the schooner?

A. No, sir. I didn't see any light. I saw a lantern hanging there the next morning with no light in it. I didn't see any light at all.

Q. Did you see anybody on the deck of the schooner before the ferry-boat got afoul of her?

A. No, sir.

Q. Before the ferry-boat got afoul of her, did you give or hear any hail to the schooner?

A. I would not be positive in regard to the schooner. I know I hailed the bark, but whether I hailed the schooner or not, I could not say.

Q. Did a ferry-boat come up to the tug while the tug was playing on the schooner, to put the fire out?

A. Yes, sir.

Q. What did she do?

A. She came up there and put a stream of water on the schooner.

Q. Did she take off the crew?

60 A. She took on board all those men that came on board of us from the ferry-boat in the first place. She laid there a few minutes and left.

Q. You were putting out the fire at the time she came there?

A. Yes, sir.

Q. She did throw some water?

A. Yes, sir.

Q. At the time she came there, do you know whether you were getting the flames under?

A. I could not say, but as far as could be seen from the deck, we had.

Q. What was burnt on this schooner?

A. All the head-sails, the foremast, the fore-rigging, the jib-boom, bowsprit, and a part of the hull forward.

Q. Who took the hose on board the schooner from the tug?

A. I helped take them.

Q. Did you say the water was playing from the ferry-boat, and she was attached to her?

A. Yes, sir.

Q. How was she attached?

A. She was made fast by a line from her port-bow to the schooner's starboard bow.

Q. Who took that line to her?

A. I did, myself.

Q. What line did you take?

A. I took the bow line first.

Q. Was the tug exposed to any risk while lying aside of the schooner; was there danger of catching fire?

A. Yes, sir, there was some. Her paint was blistered. She was scorched up some forward.

Cross-examination by Mr. Owen:

Q. How long have you been connected with the tug Clara Clarita?

A. At that time?

Q. Yes, sir.

A. A little over four years.

Q. Had you been wheelsman during all that time?

61 A. Yes, sir.
Q. What is your duty as wheelsman?
A. To steer the boat.
Q. Where do you stand?
A. In the pilot-house.
Q. Where is that pilot-house on your boat?
A. It is about twenty feet, it may be, abaft the stem.
Q. How much is it elevated above the deck?
A. The floor is about three feet above the deck.
Q. Were you in the pilot-house ahold of the wheel all the time until you attempted to place her on the flats after pulling the ferry-boat out?
A. Yes, sir.
Q. Any one assist you in steering?
A. No, sir.
Q. Anybody in the wheel-house with you?
A. The captain came in once; I think it was when we were rounding. I cannot say whether it was after the hawser burned the second time or after it had burned off the third time, before he came in. It was one or the other of these times. I think it was after the hawser burned the second time.
Q. How many hawsers had you on board your tug?
A. We had four.
Q. Give the size of them.
A. Three of them were five-inch rope, and one was a seven-inch rope.
Q. Which rope did you put on the first time?
A. The five-inch rope.
Q. Was it the same rope that you had made fast to her when you first went to her?
A. Yes, sir.
Q. When did you put on the seven-inch rope?
A. After the five-inch rope had burned off twice we put on the seven-inch rope.
Q. Did that burn off?
A. I expect it burned off; I don't know.
Q. Did you not say you cut loose after she came aground?
A. We cut loose the last time, when the boat sunk.
62 Q. Then you put on the seven-inch rope when she was afoul of the schooner?
A. We put it on before she got afoul of the schooner.
Q. But it was not used to tow until after she had got afoul of the schooner?
A. Yes, sir; it was used before that.
Q. When?
A. Before it burnt off. Before we got afoul of the schooner.
Q. How long do you think you had played water on the burning boat while it lay in the slip?
A. A half hour; it may have been more.
Q. Was there another hose playing upon that at the time?
A. Yes, sir.
Q. How much do you think the boat settled while she lay in the slip?
A. I could not say. I didn't take particular notice when we first went there to notice how she was out of the water.
Q. Do you think she settled at all?
A. She had settled some.
Q. Do you know how wide that boat was across the bow or New York end?

A. She may have been thirty feet; I don't know exactly.
Q. Do you know her length?
A. No, sir.
Q. Do you know her width amidships?
A. No, sir.
Q. Do you know her tonnage?
A. No, sir.
Q. Did the fire appear at all before you made fast to her to take her out, so that you could see the flame?
A. No, sir.
Q. Did you not all suppose you had got the fire under at the time?
A. At the time we pulled her out?
Q. Yes, sir; at the time you made fast to take her out.
63 A. No, sir.
Q. What effect had the towing her down against the wind and tide?
A. I do not know.
Q. Would it not fan it up?
A. I suppose it would help fan it some.
Q. In the process of making fast you first brought your tow toward the ferry-boat?
A. Yes, sir.
Q. And you made the rope or hawser fast to the ferry-boat on her starboard bow?
A. Yes, sir.
Q. What part of it did you attach to?
A. It was on the starboard bow; that is all I recollect. It was upon an iron cleat on the starboard bow.
Q. Was there an anchor hanging on the starboard bow?
A. I did not notice any.
Q. Did you help make fast the hawser at that time on the boat?
A. Yes, sir.
Q. How long had that hawser you made fast at that time been in use?
A. It might have been in use three weeks or a month—not more than that.
Q. Had you any vessels with it?
A. No, sir.
Q. Had not towed anything with it?
A. No, sir, we had not towed anything with it. We used them to make the boat fast with.
Q. Before you fastened the end of your bow did you back out and turn the bow out in the stream, and then back up again to the ferry-boat?
A. When we first went in?
Q. You went in and made fast to the ferry-boat; how did you get your bow around out into the stream?
A. We took the line from our bow, and took it into our quarter-chock on the starboard quarter, and made it fast to the aft bits; we backed on to it, and it swung our bow clear of the ferry-rack.
64 Q. Then the ferry-boat was at your stern, so that you could pull upon her?
A. Yes, sir.
Q. How long, as near as you can recollect, was it from the time you commenced playing water upon it before the fire broke out, and burned off the hawser?
A. It may have been twenty minutes before the hawser burned off.

Q. How far out into the stream had you towed her?
A. About 200 yards.
Q. Was any person on board of the ferry-boat at the time when you started?
A. No, sir.
Q. Where were those who were on the boat?
A. They were all on our boat.
Q. Who was left on the ferry-boat?
A. None that I know of.
Q. Who directed you how to steer?
A. The captain of the tug.
Q. You took all your directions from him?
A. Yes, sir.
Q. Had the line broke off or burnt off while you were towing the ferry-boat into the stream, before you began to swing up?
A. Yes, sir; we were just about going to swing when the hawser burned off.
Q. Are you sure it burned off?
A. I am not sure; I know it became separated.
Q. You don't know whether it burned off by fire, or whether it separated?
A. No, sir, I could not say.
Q. When the line broke, how did the ferry-boat drift then.
A. She drifted up the river.
Q. What were your orders then?
A. I don't remember what my orders were.
Q. What did you do with your wheel?
A. I cannot recollect what order I got about which way to put the wheel; but I did whatever I was told to do. I cannot remember now the orders.
65 Q. The order came from the captain?
A. Yes, sir.
Q. Do you remember whether you ported your wheel in coming around, or starboarded?
A. I don't remember now which way I did come.
Q. How long was it, as near as you can judge, from the time this hawser parted before the ferry-boat came afoul of the bark?
A. As near as I can remember, about five or six minutes.
Q. Had you got up to her, so as to begin to make fast, before she got afoul of the bark?
A. No, sir; we had not got into her close enough for that.
Q. Why had you not?
A. We had not got our line in; as soon as we got our line we went right off for the ferry-boat.
Q. How did you take hold of the ferry-boat at that time?
A. We took hold of her with the same-sized rope.
Q. Was it the same line?
A. I don't know whether it was the same line, but it was the same-sized line, I know.
Q. To what was the line made fast on the ferry-boat?
A. I could not say.
Q. You did not observe that?
A. No, sir.
Q. Nor how it was made fast on to your boat?
A. No, sir.
Q. When it was fast, how were you directed to steer?

A. To steer about southeast.
Q. Right away off again?
A. Yes, sir.
Q. Did you swing around in order to do that?
A. I didn't want to swing round. I wanted to go right ahead. We pulled her about southeast—in a southeast direction.
Q. How far did you pull her into the river before you began to swing up astern?
A. Just as soon as we got her clear of the bark.
66 Q. In about what part of the river were you?
A. We were then about two or three hundred yards from the shore—from the end of the dock.
Q. Which shore?
A. The Jersey shore?
Q. When you turned up the river?
A. Yes, sir.
Q. How far had you turned up the river before the hawser parted?
A. It might have been up to Eighteenth or Nineteenth street. I could not say; but somewhere along there, in that neighborhood.
Q. Did you cant over toward the New York shore during the time you were towing?
A. While swinging around we went over that way some, to turn around before going up the river.
Q. How did the hawser part the second time—did you see?
A. No, sir.
Q. Had you seen the schooner when the hawser parted the second time?
A. No, sir.
Q. Was there any danger at the time—any probable danger to the schooner when that hawser parted, from having this boat drifting upon her?
A. The second time?
Q. Yes, sir.
A. No, sir. I did not see any schooner. I did not suppose there was any vessel there.
Q. When did you first notice the schooner?
A. Just before the hawser burned off the third time.
Q. Then the hawser parted the second time when you were towing, after you had got afoul of the bark, and before you got up to the schooner?
A. Yes, sir.
Q. How far had you towed her, do you think, the second time, before it parted?
A. I don't know exactly how far we had got with her.
67 Q. Had you got to moving up in the direction you wanted to go?
A. Yes, sir, we were heading in the direction of the flats.
Q. Was she settled in the water at that time?
A. Yes, sir, she was getting pretty low in the water.
Q. When the hawser gave way the second time, then what did you do?
A. After it gave out we got the seven-inch hawser out.
Q. How long were you in getting to her?
A. We might have been ten minutes or more—fifteen, probably.
Q. When you got to her with that hawser, was the schooner in sight then?

A. Not at that time. I did not see her.
Q. How long did you tow with that hawser?
A. We might have towed ten or fifteen minutes.
Q. What occurred then?
A. The ferry-boat became separated from us by the hawser giving way or burning off.
Q. Are you not mistaken in saying that the seven-inch hawser was put on at that time?
A. No, sir.
Q. It was done?
A. Yes, sir.
Q. Was it not at the time she lay afoul of the schooner?
A. It was put on at that time too. It was put on twice; the first time was before she got to the schooner. The last hawser we run to her was when she was lying fast to the schooner.
Q. When did you first see the schooner?
A. Just as the hawser burned off the second time.

By the court:

Q. The second time?
A. The third time.
Q. How far was the schooner from you at that time?
A. Probably three hundred yards; it may have been more.
68 Q. And bearing off your starboard, was she not?
A. Yes, sir, from us.
Q. At that time was there any probable danger of a collision of the burning boat with the schooner; did you think there was any danger?
A. No, sir, I did not think there was. I thought the ferry-boat would clear her.
Q. When did you think there was any danger of their coming together?
A. When she was within about fifty or seventy-five yards of her.
Q. What did you do on board of your vessel to prevent her from getting afoul of the schooner?
A. I was trying to get hold of her to keep her clear.
Q. You did not get hold of her?
A. Not in time.
Q. Why not?
A. We had not help enough, and if we had got a boatful of men we could not have done it any quicker. We got in the hawser as soon as we could.
Q. Was there any difficulty in steering the tug?
A. No, sir.
Q. Not at all?
A. No, sir.
Q. Nothing the matter with the tiller-ropes?
A. There was a piece of rope-yarn got jammed upon the sheaves.
Q. Didn't that embarrass you in steering the boat?
A. Not for any length of time.
Q. Didn't you stop some time to fix it?
A. Not for that.
Q. Didn't you fix it while you were stopping?
A. I don't know whether we were stopped or not. I know that I went out of the pilot-house and found out what it was, and I pulled it out.
Q. Who had the wheel during that time?

A. The captain.

69 Q. You didn't think there was any risk of collision until the ferry-boat came within seventy-five yards of the schooner?

A. From where I was I could not see that there was—that is, when I made up my mind she was going to strike her.

Q. Where were your captain and men at the time?

A. All the men were aft, and the captain was on the aft part of the house. The men, I suppose, were getting in the hawser. I don't know.

Q. Who directed the taking out of the hawser and making it fast?

A. The captain, I suppose.

Q. He took the whole command of the tug—the whole service?

A. Yes, sir.

Q. When the ferry-boat struck, did you come that way up against her? (illustrating.)

A. She drifted up that way with the tide.

Q. She came pretty near the broadside on the schooner?

A. Yes, sir; very nearly.

Q. How long after she came in contact with the schooner before you got hold of her to drag her off?

A. She might have laid there three or four minutes, and it might have been more. I could not say exactly as to the time.

Q. Was all that time necessary for you to get the hawser again fast to her?

A. Yes, sir.

Q. How far did you tow her after that before she took the bottom?

A. I may have towed her some hundred yards, or one hundred and fifty yards, may be.

Q. How deep was she in the water when she took the bottom?

A. I don't know. I do not know how much water there is there.

Q. Don't you know how deep the water is where she grounded?

A. No, sir; I don't know exactly.

70 Q. Had she settled visibly very considerably?

A. Yes, sir; before she sunk she had.

Q. When the captain and men came out to the tug after the ax, had you commenced towing the ferry-boat off from the schooner?

A. I think we were towing on her then and trying to pull her clear, but I am not certain.

Q. Did you give him an ax?

A. I didn't, but some of the men, I believe, gave him an ax.

Q. You told them to go back, and that you would come and put out the fire?

A. The captain told him that, I believe.

Q. When you came back, did you not find them on the deck or by the schooner?

A. I did not see them at all.

Q. You never saw them at all?

A. Not until after we were alongside, and had made fast to the schooner.

Q. Then you saw them?

A. Yes, sir.

Q. Where did you see them?

A. I saw the mate and one man abaft the foremast.

Q. On the vessel?

A. Yes, sir.

Q. Did you not hear some one say to drop your yawl astern as you came up there?

A. There were some men who came in a shore-boat, and I told them to drop astern, where they could creep up on the side.

EDWARD PALMER, a witness called on behalf of the New York Harbor Protection Company, being duly sworn, testifies:

By Mr. Van Santvoord:

Q. You were engineer of this tug?
A. Yes, sir.
Q. Were you on board at the time she went to the Hoboken ferry slip?
71 A. I was.
Q. In August, 1870?
A. Yes, sir.
Q. After she got there, do you know what she did?

The COURT. There seems to be very little dispute about the facts in this case, and it is not worth while to go over those matters that are wholly undisputed. We have had three witnesses who have tediously told the whole story. Their statements do not vary a particle. I do not believe it will vary in this case. It is quite apparent where the dispute s, and I would suggest that it is useless to accumulate evidence as to the main points in the case.

Examination resumed:

Q. You went on this boat?
A. Yes, sir.
Q. Did you assist in taking the hose on board the ferry-boat?
A. No, sir.
Q. What did you do there?
A. I attended to the engine.
Q. You worked the pumps with the engine?
A. I attended the engine that drove the pumps, and I attended to the pumps. They were separate from the main engine.
Q. And you remained as engineer working the engine when it was worked?
A. Yes, sir, according as the bells rung.
Q. Were you alongside the schooner when the tug went there to put the fire out?
A. Yes, sir.
Q. Did you observe the progress of the flames?
A. Yes, sir, I did when I was on deck. I was looking after a pump. They had got pretty well and going on the schooner.
Q. Had it made such progress that the boat would have burned?
A. I had my doubts whether they would be able to put it out.
Q. Do you recollect this ferry-boat?
72 *Y.* Yes, sir; she came alongside of us.
Q. Which side?
A. On the starboard.
Q. What did she do?
A. I don't recollect of her doing anything.
Q. Did she take off any men?
A. She took men aboard of her.
Q. Were you fast to the schooner at the time?
A. Yes, sir.
Q. After that did she go away?
A. Yes, sir.
Q. Before you put the fire out?
A. Before we put the fire out.

Cross-examination by Mr. Owen:

Q. Did you have anything to do with making fast with the hawsers?

A. No, sir.
Q. Did you see them made fast?
A. No, sir.

By Mr. Van Santvoord:

Q. Your place was in the engine-room?
A. Yes, sir; altogether.

JOHN J. CHASE, a witness called on behalf of the New York Harbor Protection Company, being duly sworn, testifies as follows:

By Mr. Van Santvoord:

Q. What is your occupation?
A. Superintendent of the Hoboken Ferry Company.
Q. Were you superintendent of the Hoboken ferry in 1870?
A. I was.
Q. Were you present at the time of the fire on the ferry-boat Watt?
A. I was not present at the time of the breaking out of the fire. I was there directly after.

73 Q. What description of vessel was the Watt?
A. She was a boat 184 feet long.
Q. A ferry-boat?
A. A ferry-boat.
Q. What had she on deck?
A. One covered gangway and one open gangway and a cabin on each side.
Q. These cabins were of what material?
A. Of pine.
Q. The joiner-work?
A. The joiner-work.
Q. With the usual inclosure in the middle of the boat, inclosing the gallows-frame and engine?
A. Around the engine.
Q. Wheel-houses?
A. Yes, sir.
Q. A deck over one carriage-way?
A. A deck over one-half of the boat.
Q. And above that pilot-houses?
A. Pilot-houses.
Q. What was the height of the cabins on the deck?
A. I should think they were between nine and ten feet.
Q. Was this deck covered with canvas or was it pitch?
A. I am rather of the opinion it was canvas.
Q. Where was the boat at the time she was burning?
She was in the Christopher street slip.
[A diagram of the relative locations of the boats and the racks at Hoboken ferry landing was here produced to the witness.]
Q. How many slips are there?
A. Four.
Q. You call this the Christopher street slip? [Referring to the diagram.]
A. There are two slips of the Christopher street ferry, but only one that is finished.
Q. Then to the north of that, is what?
A. There is a vacant place we call the canal, to lay up boats in.
Q. North of that, what?

74 A. The Newark street pier.

Q. And north of that?
A. The balance-dock.
Q. Has the Christopher street slip what you call a pier?
A. There is a centre pier running out.
Q. Built of what?
A. Oak piles.
Q. Any pine in any part?
A. No, sir; nothing except the cover over it.
Q. The Christopher street pier, that is separated from the next?
A. By a row of piles.
Q. The next pier south is the Barclay street?
A. There is no pier there.
Q. Is there a slip?
A. There is a rack.
Q. Separating?
A. Yes, sir.
Q. These different slips, the Hoboken slip and the slip between that and Christopher street, are all separated by what you call racks?
A. Yes, sir.
Q. And these racks are of what?
A. Oak piles.
Q. At the time this ferry-boat was on fire, what other boats were in her neighborhood?
A. The Patterson was lying along on the south side.
Q. Separated from her by what?
A. By a rack of piles.
Q. Where was the Rumsey?
A. The Rumsey was lying on the north side of her, on her bow.
Q. And the Chancellor?
A. She laid next south, on the end.
Q. And the Clara Clarita?
A. She laid between her and the Christopher street rack.
Q. And south of the rack?
A. Of the Christopher street rack.
Q. And the Weehawken?
A. She laid in the canal.
Q. On this ferry—what was there?
A. The ferry buildings. There are slips and bridges there, and sheds over them.
Q. Then these waiting-houses?
A. There are two, right in between the two slips.
Q. Close upon them?
A. Yes, sir.
Q. Was there a tank in the slip next south of the Christopher street slip?
A. Yes, sir; south of the Christopher street slip, and a short distance from the Patterson.
Q. A tank for what?
A. A tank for gas.
Q. What did it hold?
A. Eight hundred feet.
Q. Was there any connection with the gas-tank and the Christopher street slip?
A. Yes, sir; there was a four-inch iron pipe, which was laid along until it came to the lower pier, and led into a box on top of the rack, with an India-ruber tube beyond.

Q. Connecting with this shed and ferry-house on the wharf?

A. The pipe lays within two feet of it.

Q. Connected with the building on these wharves were there the offices and the buildings of the Morris and Essex Railroad Company?

A. They laid on the lower side of the Barclay-street slip.

Q. Was there any lumber on any of these wharves?

A. I should think there was; there is almost always some on the wharves by the Barclay-street ferry.

Q. Does this map already produced represent the position of these piers and the way the boats were?

A. Nearly so; there is not a great deal of difference, but there is some little difference.

Q. Where was the fire on board of the boat when you got there?

A. Down in her hold.

76 Q. What was done to put that fire out; what efforts were made?

A. All efforts were made, as far as I know, in regard to water, etc.

Q. State how many streams, and from what.

A. I could not tell what streams there were from the shore.

Q. State all that you do know.

A. I know that there was one from the Hoboken and one from the Chancellor, one from the Rumsey, and I think two from the Clarita.

Q. And were there other streams from the hydrants of Hoboken?

A. I presume there were. I saw hose, but I don't know where they came from; I presume they came from there. I saw hose and I saw water, but I could not say from what particular point they got it.

Q. Did you have the hose from the Hoboken?

A. I did. I got it out myself—that is, I helped to get it.

Q. Where was the water thrown by these different streams?

A. It was thrown down below to keep the fire down. I throwed a stream right around in the engine-room—that is, around in the crank-room, until it was taken away from me.

Q. What effect did these streams of water have in extinguishing the fire?

A. I don't think they had any; if anything, the fire was gaining.

Q. What was the difficulty?

A. The fire was breaking out under her guard.

Q. Why was it gaining; what was the difficulty in extinguishing it?

A. We could not get to it.

Q. Why could you not get to it?

A. For the simple reason that a man cannot cut a hole through the roof of the house——

Q. The fire was right under the deck?

A. I could not play on to it to reach it.

77 Q. Could anybody get into that hold to direct the water where the fire was under the deck?

A. I should rather say not.

Q. Why?

A. Because he would burn up.

Q. It was full of flame and smoke?

A. The smoke was very dense.

Q. At the time the direction was given to haul the boat out, had the joiner-work of the ferry-boat got afire?

A. It was on fire.

Q. Was there anything to prevent the fire from burning these racks and the buildings on the docks?

A. No, sir; I think not.

Q. And the other boats adjoining?

A. I should think not.

Q. Then, at the time she was hauled, was it necessary to haul her to prevent the spread of the conflagration?

A. I should think it was.

Q. Your docks, wharves, and racks, and the other buildings would have been consumed by it?

A. I should think they would.

Q. Did you give any order to haul her out?

A. I think I did; I am not positive—either me or Mr. Curran.

Q. At the time the order was given you had ascertained that the fire could not be extinguished?

A. I was satisfied that it could not be.

Q. Could that boat have been scuttled where she lay in the slip?

A. No, sir.

Q. Why not?

A. We could not get to the water's edge to her.

Q. The sides of that boat under water, did they incline?

A. Yes, sir; they run off in this shape—flaring, (indicating the shape.)

Q. If she had been scuttled, was there depth of water enough in that slip to have extinguished the fire in the wood-work and joiner-work?

A. I know there is not. She would not have sunk. She was
78 full of iron tanks. She had nearly 200 iron tanks in her.

Q. When the Clarita towed her out, or commenced towing her out, where were you?

A. I was on the bow of the ferry-boat. When she commenced to tow her out, I was then on the Clara Clarita.

Q. Did you go with the Clara Clarita?

A. I went along with her.

Q. You were on board at the time the ferry-boat drifted against the bark?

A. Yes, sir.

Q. Were you on board at the time she drifted against the schooner?

A. Yes, sir.

Q. Did you see anything that could have been done that was not done to prevent the ferry-boat from drifting upon the bark or upon the schooner?

A. I think if there had been a chain got out in the first place it would not have happened?

Q. From where?

A. From the ferry-boat to the Clara Clarita.

(By the court:) To the ferry-boat?

A. Yes, sir.

Q. Had the Clara Clarita any chain on board?

A. I do not know.

Q. Did you ever know of boats being towed by chains?

A. Not in fair weather; I never did.

Q. Did you ever know of tug-boats using a chain-hawser?

A. I never knew them to use that.

Q. The only thing that occurs to you by which this getting foul could have been prevented was by a chain-hawser or something that was not combustible?

A. I think if she had had a chain she would not have fouled the bark.

Q. A chain instead of a rope hawser?

A. Yes, sir.
Q. Is a chain when it gets hot easily handled?
A. Not when it gets hot.
79 Q. When it gets hot would it not pull off the fastening?
A. Not if it is fastened on iron.
Q. Will not it depend upon what the iron is fastened to?
A. That will depend upon what the iron is fastened to.
Q. Your idea is, if she had had a chain-cable fastened to an iron cleat, and that had been fastened to something incombustible, the ferry-boat might not have got adrift?
A. If there had been an iron chain fastened to an iron cleat, and that cleat fastened to an iron vessel, she certainly could not have got away, but in this case the cleat remained there.

By the court:
Q. She had an iron cleat?
A. Yes, sir.
Q. What was that fastened to?
A. To the deck.
Q. A wooden deck?
A. Yes, sir.
Q. Was the Watt an iron boat?
A. No, sir; the Watt was a wooden boat.
Q. One of the witnesses spoke of the cabin being made of iron.
A. The cabins are of wood.
Mr. Van Santvoord. The witness said of pine.
Q. There was no iron about her where she was attached?
A. No, sir; nothing but the fastening.
Q. Nothing there but this iron cleat?
A. Nothing but her fastening—this iron cleat.

By Mr. Van Santvoord, resuming:
Q. Where did you last see that iron cleat?
A. I saw that this morning—or one of them—one of the four—I could not say that it was this one.
Q. Where did it come from?
A. From the Watt.
Q. Did you take it off?
80 A. No, sir; some of my men did.
Q. Do you know what part of the Watt it was taken from?
A. From the bow.
Q. You do not know whether it was the cleat to which the hawser was attached?
A. No, sir, I cannot say; but there was a line attached to it like the one on the Clara Clarita, that was cut from the same cleat I have spoken of.
Q. Your ferry-boats tow vessels sometimes?
A. No, sir.
Q. Do not they ever do so?
A. No, sir.
Q. Do they tow each other?
A. Once in a while they tow each other; but very seldom, however. If they happen to break down in the river, they sometimes go to them and tow them in.
Q. Did you ever know a tug-boat to be furnished with any other hawser except the hempen hawser?
A. This was not a hemp hawser.

Q. Manila hawser?
A. I have seen them with both hemp and Manila hawsers.
Q. But you never knew a tug-boat to be furnished with chain-hawsers for towing?
A. No, sir, I never did.

Cross-examination by Mr. Owen:

Q. Where a tug-boat is used for towing burning vessels in that situation, what can be most safely used, a chain or a Manila hawser?
A. A chain is the only thing that will stand fire; a hemp hawser or Manila hawser will burn off.
Q. Had you a chain on board your boat?
A. There was a chain in the chain-box.
Q. Sufficient to have towed her?
A. Yes, sir, I should think it was.
Q. The cleat to which the hawser was attached, as I understand you, did not burn away?
81 A. No, sir.
Q. And part of the hawser you found attached to that same cleat?
A. That is, my men did. I saw the hawser.
Q. Did you see the hawser when it first parted?
A. I did.
Q. Did it burn apart?
A. I think it parted.
Q. How far into the stream was the ferry-boat at that time?
A. I don't think she was more than clear of the slip, handsomely clear. She might have been a length and a half, but I do not think she was any further than that.
Q. She was heavily water-logged—got to be very heavy?
A. No, sir.
Q. There was a good deal of water in her?
A. I don't think she had settled more than three inches; she might have settled a little more.
Q. Had you an anchor on board of the ferry-boat?
A. There was an anchor on board of her.
Q. Was there any difficulty in casting that anchor after you got her out?
A. Yes, sir; there was too much fire. You could not have done it.
Q. Do you think it was prudent to attempt to tow that ferry-boat with a hempen or Manila hawser?
A. That would be according to circumstances. For instance, if you started her out of the slip with a hawser to stop so as to keep the fire from communicating and to get chains to her, that would be one thing, and another thing would be to have got chains to her in the first place.
Q. Could you not have got a chain to her after you got her out of danger?
A. I do not think there was time.
Q. There was time to have taken a chain and fasten that to her before you started?
A. It might have been done.
82 Q. Was the heat at that end of the ferry-boat sufficient to have interfered with the handling of that hawser and using it, after it was made fast?
A. It was on the opposite side. The fire was heaviest on the port side.

Q. The chain might have been used?
A. It might have been made fast.
Q. Did you see the hawser when it parted the second time?
A. I think I did.
Q. What caused it to part on that occasion?
A. I couldn't say whether it burned or parted that time.
Q. Was that the same hawser that separated before?
A. I could not say that it was the same one, but it was one about the same size—the same dimensions.
Q. Did you observe whether the hawser was burned off the third time?
A. My opinion is that it *did burn off* the third time, but I am not certain. I know it parted at any rate, or let go in some shape, whether it came from burning or whether it parted.
Q. Do you know whether the hawser that burned off the third time was the same size that you used the first time?
A. I think it was the same dimensions.
Q. When was the large hawser put on?
A. When under the schooner's bow.
Q. After that they succeeded in towing the ferry-boat on to the flats?
A. They pulled her from under the schooner's bow, and she soon after sunk.
Q. Do you think she could have been towed by that large hawser in the beginning?
A. I think she could have been straightened up the river with that hawser. It was a four-stranded hawser, with a hard into it—there is one there now. It is the same kind of line that parted that night.
Q. What appeared to be the character of the first that were used before the large one, as to age and use?
A. I think they had seen considerable use.
83 Q. Do you think they were suitable to tow a burning boat through the harbor of New York?
A. That would be rather a hard thing to answer?
Q. Give your judgment as a practical man.
A. There are times it might be done, and there are times it could not be done.
Q. Was it prudent to attempt to tow a burning vessel through the harbor of New York with these small line
A. I think the lines would have been good enough, provided they had been strong enough—that is, large enough.
Q. You think they were not strong enough?
A. I think they were not strong enough. The last one did not part.
Q. Let me ask you again. Did you take any command or charge of the navigation of the tug?
A. No, sir; I did not.
Q. By whose direction was the tug made fast when she broke the last line?
A. The captain's.
Q. Did you observe, during the time, any difficulty with the tiller-ropes or wheel-ropes, that the witness has spoken of?
A. I knew of it.
Q. What was it?
A. The wheel-ropes became jammed by being stranded, I should think.
Q. What effect had that on the steering of the boat?
A. They could not steer her.

Q. Did that cause any delay in getting up to the burning boat again to make fast to her?

A. Yes, sir; it did.

Q. Do you know where that injury occurred?

A. It occurred between the bark and the schooner.

Q. Could that have been repaired promptly, so as to have been serviceable, quicker than it was?

A. I do not think it could.

Q. After the hawser burned off the second time—that is, I mean the time she drifted into the schooner—could the tug-boat have advanced and assisted the schooner to get out of the way?

84 A. No, sir.

Q. Why?

A. Because she was disabled and in such a shape that she could not, on account of the tiller-ropes.

Q. (By the court:) That was after the hawser parted the third time?

A. Yes, sir.

Q. Were the tiller-ropes defective after the hawser parted the third time?

A. I should think not. I did not notice it, at any rate.

Q. Did you notice the character of these tiller-ropes? Were they proper and suitable?

A. They were ropes.

Q. Is that proper?

A. One strand had given away.

Q. (By the court:) Wound around?

A. No, sir; by loosing itself from the lay it jammed in the block.

Q. It would not run?

A. It would not run.

Q. (By the court:) One strand had worn away?

A. It had parted.

Q. Do you know what is the proper wheel-rope to be used on such an occasion?

A. I believe they are generally iron rods and chains around the barrel—around the wheel and around through the blocks.

Q. If she had chains at that time, do you think she could have got to the assistance of the schooner?

A. If she had had a chain she could have towed the boat clear in time.

By the court:

Q. Clear of the schooner?

A. Yes, sir.

Q. You mean she could have got to the boat, so that the boat would not have fouled the schooner at all?

85 A. Yes, sir; she could, I think. That was the delay more than anything.

By Mr. Owen, resuming:

Q. Did you observe how the ferry-boat drifted on the schooner?

A. I should think it was nearly broadside on, right in the wake of her wheel. If anything, she was a little furthest to the eastward—that is, one end of the boat.

Redirect examination, by Mr. Van Santvoord:

Q. This chain which you had on board your boat, was it an anchor-chain?

A. Yes, sir; a small anchor-chain.
Q. Where was that?
A. It was on one bow or the other; I cannot say which.
Q. Did you ever use that chain in towing a boat?
A. No, sir, I did not.
Q. Did it occur to you that there was any necessity to use that chain at the time?
A. I don't know that it did.
Q. You say that that chain was in a box?
A. It lies in a box.
Q. Is it in such a shape that it could be used as a hawser?
A. Yes, sir.
Q. What has it at the very end?
A. It has a clevice.
Q. Could it be attached as a hawser?
A. Yes, sir; by sticking the bight of the chain through it.
Q. What was the length of the chain?
A. I should think there was about 45 fathoms; no, there is only two shot—thirty fathoms. I think there is about two shot of it.
Q. How much time had elapsed between the discovery that the fire could not be extinguished in the slip and the directions to take this boat in tow?
86 A. I do not think it was more than three minutes—from three to five minutes.
Q. It was a very short interval?
A. A very short time.
Q. This matter of the chain—did it occur to you then?
A. At that time it did not.
Q. Did it ever occur to you except in the light of the event? On looking back, it occurs to you that if that chain had been used this casualty——
A. I saw it as soon as we got into the river.
Q. Before the hawser burned?
A. I cannot say that I did before the hawser burned.
Q. After the hawser burned?
A. After I got back on board of the Rumsey, then I thought of this chain.
Q. When did you get on board of the Rumsey?
A. While the tug-boat was lying by there, before the Watt sunk.
Q. What was the tug towing at the time?
A. She was lying still at the time, getting in the hawser that had been cut.
Q. After the ferry-boat sunk?
A. Yes, sir.
Q. After you got on board the Rumsey, this matter of the chain-cable occurred to you?
A. Yes, sir.
Q. That they might have saved all this disaster?
A. If they had taken their chains out then they could have saved it.
Q. No mention was made of any such thing at any time?
A. No, sir; I did not make any mention of it.

Recross-examination:

Q. Did you ask the captain if he had the power to tow her round?
A. He said he could.
Q. Did he ask you for your chain?

A. No, sir.

87 Q. Was the deck of your boat such as you could have got the chain safe before you started out of the slip?

A. Yes, sir.

Redirect examination:

Q. You say you do not know what end of the boat that chain was in?

A. No, sir; I do not know what side it was in.

Q. Do you know what end it was in?

A. I do not know now.

Q. At the time the order was given to take hold of this boat and she was taken in tow, could you have got from one end of the boat to the other?

A. I do not think we could,

THOMAS SMITH, a witness called on behalf of the New York Harbor Protection Company, being duly sworn, testifies:

Mr. Van Santvoord:

Q. You were present at this fire?

A. Yes, sir.

Q. On what boat?

A. The James Rumsey.

Q. Where was she in reference to the Watt at the time the Watt was burning?

A. She laid on the Watt's port bow.

Q. Calling the York end the bow?

A. Yes, sir.

Q. In the manner represented in this diagram?

A. Nearly; a little more straight with the Watt.

(The diagram is marked Exhibit A. Page 162.)

Q. Do you know what was done to put out the fire on Watt?

A. I know we had one stream of water from the Rumsey.

Q. Were streams put on from other boats as well as the Clara Clarita?

A. The Chancellor.

Q. And what other?

88 A. That is all I know except the Clara Clarita.

Q. Where was the hose taken from your boat, the Rumsey?

A. Near amidships over the ladies' cabin, on the New York end of the Watt, leading over near the smoke-pipe down on the main deck in the hatchway, where they take in wood.

Q. At the time the fire was burning, where was the Watt?

A. Lying in the Christopher-street slip.

Q. What was on her starboard side?

A. The Patterson.

Q. Between the Patterson and her was what?

A. A rack.

Q. Of what?

A. Oak piles.

Q. Where was the Weehawken?

A. Along in the canal, alongside of the ferry-house.

Q. Next to that was what?

A. The Newark-street pier.

Q. And above that what?

A. The dry dock.

Q. On the other side, with reference to the Patterson, where was the gas-tank?

A. The gas-tank was in the ferry-house nearest the Barclay-street slip.
Q. On the starboard quarter of the Patterson?
A. Yes, sir.
Q. The Hoboken lay on the other side?
A. Yes, sir.
Q. Then inside the slips what was there?
A. The ferry-houses.
Q. Connected with that were the Morris and Essex buildings?
A. Yes, sir.
Q. What was there, if the Watt should catch fire and burn, to prevent the burning of these racks and buildings on the dock, and the other boats?
A. There was nothing that I know of to prevent it.
Q. You were close enough?
89 A. She was lying right against the rack on one side and the Patterson on the other.
Q. Did you observe whether the fire from that boat was making progress, notwithstanding the efforts made by throwing water in it to extinguish it?
A. I think it was very fast.
Q. What made the difficulty?
A. The fire was up under the deck, on the lower side of the deck; and the water played in was on the bottom and could not reach up to the flame.
Q. Was there any means of reaching it without getting into the hold?
A. I think it was impossible.
Q. Why was it not possible?
A. It would burn a man up down there.
Q. It was full of flame?
A. Full of flame and smoke. It was so thick that a man could not stay there.
Q. That was the condition when direction was given to tow her out?
A. Yes, sir.
Q. Did you observe any flames burst out before she was hauled out?
A. I did.
Q. Where was it?
A. Under her guard on the port side, just forward of the wheel on the New York end.
Q. Was there an air-hole under that guard?
A. There was an air-streak about a foot wide, I think, nearly.
Q. Smoke coming out there?
A. I believe it did, dense.
Q. A dense volume?
A. Yes, sir; and flame, some time before they towed her out.
Q. Was your boat scorched?
A. Yes, sir; considerably.
Q. Could the boat have been scuttled in the place where she was?
90 A. I do not think she could have been easily scuttled to any effect.
Q. Was the water deep enough in there to render scuttling effectual for putting out the fire in the joiner work?
A. If the water had been deep enough she would not have sunk; she has iron tanks enough to keep her afloat under the main deck.
Q. Was there anything to do except to tow her out?
A. Or to let her lay and run the risk of burning the buildings up?
Q. That would have made a wide-spread conflagration?

A. It probably would.
Q. You did not go on this boat?
A. No, sir; I stayed on my own boat.
Q. How wide did you say that streak was in her guards?
A. I think nearly a foot, or nine inches—I do not know exactly.
Q. In width?
A. It was the whole length of the boat, except where the wheel is, running nearly forward. It did not run quite up to the bow.
Q. Is this diagram which has been produced substantially correct?
A. Any one acquainted with the situation will understand how it was.
Q. Would you recognize it?
A. With the exception that the Rumsey laid a little straighter than is here represented with the Watt.

Cross-examination by Mr. Owen:

Q. The Rumsey and Chancellor were the boats that came to assist in extinguishing the fire?
A. Yes, sir; they belong to the same company.
Q. They were under steam?
A. Yes, sir.
Q. What was the Patterson?
A. A ferry-boat.
Q. Did she have steam up?
91 A. No, sir.
Q. The Weehawken?
A. She is a ferry-boat.
Q. Did she have steam up?
A. No, sir.
Q. Then there were only three boats—the Patterson and the Weehawken and the Hoboken—did not have steam up?
A. The Hoboken was under steam.
Q. Then there were only two not under steam?
A. Yes, sir.
Q. Was there any difficulty in hauling those others out of danger, by those three boats?
A. No, sir; I suppose they could have been hauled out.
Q. Was there any difficulty in the Hoboken getting out herself?
A. No, sir.
Q. Then if you had taken them away from the James Watt there would have been no boats to be burned?
A. No, sir.

Re-direct examination:

Q. How long would it have taken to have got up steam?
A. The Patterson it would have taken a couple of hours, and the Weehawken about an hour.
Q. She might have been hauled out?
A. She might have been hauled out from the dock, but not very readily, by the ferry-boat. There might be danger of running afoul of the vessels anchored above the slip.
Q. But the ferry-racks and buildings could not have been hauled out?
A. They could not have been hauled out very well.

Re-cross-examination:

Q. Any one of the three boats that came in to assist could have hauled the other boats out of danger into the stream?
A. Yes, sir.

Adjourned to Monday, October 30th, 1871.

92 United States district court. Before Hon. S. Blatchford. In admiralty.

THE NEW YORK HARBOR PROTECTION Company
vs.
THE SCHOONER CLARA, HER TACKLE, ETC.

AUGUSTUS M. COX ET AL.
vs.
THE STEAM-TUG CLARA CLARITA.

NEW YORK, *October* 30, 1871.

The court met, pursuant to adjournment, at 11 o'clock, when proceedings were resumed.

HENRY DUNNING, a witness, called on behalf of the libellants, being duly sworn, testifies:

By Mr. Van Santvoord:

Q. What was your business in 1870?
A. Foreman of G. H. Ferris's ship-yard.
Q. Ship-carpenter?
A. Yes, sir.
Q. Did you have the general management of his business?
A. Yes, sir.
Q. Where is that ship-yard?
A. South Brooklyn, Red Hook Point, corner of Van Brunt and Elizabeth streets.
Q. Have you built ships and vessels?
A. Yes, sir.

93 Q. Made contracts for building?
A. Yes, sir.

Q. Estimated for building ships?
A. Yes, sir.
Q. Was the schooner Clara upon your ways in August, 1870?
A. Yes, sir.
Q. Did you make repairs on her made necessary by her burning?
A. Yes, sir.
Q. Did you examine her condition while she was on the ways?
A. Yes, sir.
Q. With what particularity?
A. We bored, to see if she was sound.

The COURT. What is the object of this testimony—has it reference to damages?

Mr. VAN SANTVOORD. It is only to prove the value of the vessel with reference to the salvage claimed.

Q. What was the value of that vessel when she was on the ways after she was burned?
A. Sixteen or seventeen thousand dollars, as near as I could judge.
Q. (By the court:) Before you touched her, before you made any epairs?
A. No, sir.
Q. You repaired the damage done by the burning?
A. Yes, sir.
Q. What was the amount of your bill for repairs?
A. It was between fifteen hundred and sixteen hundred dollars, that is as near as I can remember.

Q. Is the value which you have given to that vessel, while on your ways, in the condition she was, inclusive or exclusive of the repairs which you made upon her?

A. Inclusive; but in the condition in which she left the yard she had to go to the rigger and sail-makers. Her spars were burned some, and her rigging and sails were burned.

94 Q. (By the court:) The ultimate question is, what was her value at the time, and in the condition she was in, on your ways?

A. Sixteen or seventeen thousand dollars.

Cross-examination by Mr. Owen:

Q. Are you the owner of that yard or have you any interest in it yourself?

A. No, sir.

Q. You are foreman?

A. Yes, sir.

Q. Do you own any vessels?

A. No, sir.

Q. Have you ever bought or sold vessels?

A. No, sir.

Q. Do you know the tonnage of that vessel?

A. I forget; but I can tell by referring to the books.

Q. What repairs did you put on her?

A. We repaired the upper deck, and put in new stanchions between her fore and main hatch, clear around forward, new bulwarks, and we put several streaks of plank around the bow, bow-chocks, and hause pipes.

Q. Was that caused by the fire?

A. Yes, sir.

Q. Did you repair any part of the sails and rigging?

A. We did not.

Q. Were they destroyed by the fire?

A. Yes, sir, the captain says so.

Q. Did you put in any new masts?

A. No, sir.

Q. And bowsprit?

A. Yes, sir, a new bowsprit. We didn't put the bowsprit; he got it made by some man in New York.

Q. (By the court:) You didn't put a mast in?

A. No, sir.

Q. You say before the mast was in, and the bowsprit-sails, and rigging were repaired, she was worth sixteen thousand or seventeen thousand dollars?

95 A. Yes, sir.

Q. That is your judgment?

A. Yes, sir.

Redirect examination:

Q. What would it have cost to have built that vessel new?

(Objected to. Objection sustained. Libellants' counsel excepts.)

Mr. SANTVOORD. We offer to show what the vessel would be worth new, as a basis of getting at her value, by deducting the depreciation by use, and then deducting the amount of damage that was done.

(Evidence excluded. Libellants' counsel excepts.)

WILLIAM T. FRANCIS, a witness on behalf of the libellants, being recalled, further testifies:

By Mr. Van Santvoord:

Q. Describe the steering-gear on this tug.

A. The steering-gear from the pilot-house to the aft part of the deck are iron-rods.

By the court:

Q. What was the distance?

A. It might have been seventy-five or eighty feet.

Q. It was an iron rod?

A. Yes, sir; from that to the tiller was a chain. From the forward part of the rod to the pilot-house, three or three and a half fathoms, was rope.

By Mr. Van Santvoord, resuming:

Q. How did this rope work?

A. Round the barrel of the wheel.

Q. It went out on the house on each side?

A. It went out on each side, so that the rod would not get in the chock and bend it.

Q. Did it go through sheaves?

A. Through sheaves.

Q. And it was attached to the rod on each side?

96 A. Yes, sir.

Q. Was there an additional means of steering that boat?

A. Yes, sir.

Q. What?

A. We had a spare tiller made a purpose.

Q. To be used where?

A. To be used on the rudder, in case anything gave out.

Q. Was your attention called to any derangement in the steering-gear at the time of which Mr. Chase has spoken?

A. Yes, sir; I knew there was something the matter with the steering-gear.

Q. Was your attention called to it at the time?

A. Yes, sir.

Q. Explain what that was.

A. It was a strand in the rope between the pilot-house and the chock on the side of the boat, on the plank sheer.

Q. (By the court:) Inside the pilot-house, or outside?

A. I could not exactly say whether it was on the outside. He may have hove the wheel and made it outside. It was outside when I saw it.

Q. Where was the chock?

A. One was right in the edge of the pilot-house, and the other on the outside of the boat.

Q. How far was one from the other?

A. The chock may have been four or five feet from the side of the pilot-house.

Q. It was a broken strand?

A. It broke one strand; it was a three-strand rope.

Q. One of the three strands broke?

A. Yes, sir.

Q. What effect did that have?

A. It choked in the chock, so that it would not go backward or forward.

Q. The chocks were four feet apart?
A. I think they were four feet apart.

By Mr. Van Santvoord, resuming:

Q. Was it in both chocks, or one?
97 A. In one; I don't know which one it was.
Q. How did that happen?
A. The strain on the wheel backward and forward broke one strand of the rope so that it stranded.
Q. Was that repaired?
A. Yes, sir.
Q. How long did it take to repair it?
A. It didn't take more than a minute.
Q. Have you a rope there?
A. Yes, sir. (Produced a piece of rope a foot long, with one strand broken, which is shown to the court.) This was brought up, and that was brought up, and the result was that we had it in this shape. (Showing the manner of repairing.)
Q. (By the court:) Is this the identical rope?
A. No, sir; that was a little bigger than this, and it was a softer rope than this, but it was on the same plan. It took a minute or so out there while we were in a hurry to get it done; I have done that in a good deal less.
Q. How long did it take to repair that?
A. I say, about a minute—it might have taken a minute.
Q. Were you detained at all by that?
A. I don't think we were.
Q. When did that happen?
A. That happened when we were getting clear of the bark the second time the hawser parted.
Q. Before the hawser was attached the third time?
A. Yes, sir.
Q. Was there any difficulty with the steering gear after the third hawser parted?
A. No, sir.
Q. Or any time while the ferry-boat was adrift?
A. No, sir; we had no trouble with it; that was the only time.
Q. What was the size of this smaller hawser?
A. I said they were four and a half inch, at the time I was examined, but they were five-inch ropes.
Q. Were they such hawsers as you had been accustomed to haul ships with?
98 A. Yes, sir, a great many times. We had hauled out ships of two or three thousand tons.
Q. Ships of the Pacific Mail Steamship Company?
A. Yes, sir. I have towed some of them with the same ropes from Canal street to the Tobacco dock in Hoboken.
Q. (By the court:) With that hawser?
A. Yes, sir.
Q. You don't mean with this identical hawser?
A. I mean that same size. We never used to let the ropes get old, at all. We make out a requisition and get new ones right away.
Q. The small-sized hawsers, had they been much used?
A. No, sir, I don't think they had. I don't think they had been used more than three or four weeks. The hawsers were good.
Q. New hawsers?

A. Very nearly new. One of them in particular I guess was pretty nearly new.

Q. And strong?

A. And strong.

Q. Do you know what hawser was attached to the ferry-boat after the hawser had broken the second time?

A. The big one.

Q. What was the size of that?

A. Seven-inch.

Q. That was stronger than the others?

A. Yes, sir.

Q. Was that the hawser that burned or pulled out, as you testified, when the ferry-boat got adrift?

A. Yes, sir, got afoul of the schooner.

Q. Was that the same hawser that was used to attach to the ferry-boat the fourth time after she was foul?

A. Yes, sir, that was the same one.

Q. What was done with that hawser when you left the ferry-boat?

A. It was coiled up on the deck.

Q. Was it good?

A. Yes, sir, we cut it when we left the ferry-boat sinking. We cut it on our rail.

99 Cross-examination by Mr. Owen:

Q. What had you been engaged in for three or four weeks immediately preceding this fire, with your tug?

A. Looking out for fires, and towing around the river.

Q. You had not been engaged in towing any burning vessels previous to that time?

A. No, sir; there was none to tow.

Q. Were any large vessels towed, previous to that time, during that three weeks?

A. Not that I know of.

Q. When and where was it that you towed large vessels of some thousands of tons?

A. A great many times.

Q. What vessels?

A. The Henry Chauncey, the Rising Star, the New York, the America, the Great Republic, and all the rest of them.

Q. That was while you were employed by the Pacific Mail Steamship Company?

A. No, sir; we have towed some since we were employed by them.

Q. Have you towed any since you were employed by this new company?

A. Yes, sir.

Q. What one?

A. I cannot exactly name them.

Q. Had your tiller-rope ever broken before?

A. Yes, sir.

Q. When?

A. In the East River. I can't remember the day.

Q. Did you repair it in the same way?

A. Yes, sir.

Q. Was it necessary to take it out of the sheave to repair it?

A. No, sir.

Q. Did you assist in any manner in repairing it?

A. Yes, sir.

100 Q. What assistance did you render?

A. I lent a hand to do it.

Q. Who helped you?

A. I think it was the wheelsman.

Q. What is his name?

A. Mason.

Q. Where was it repaired; on the inside, or outside, of the pilot-house?

A. At which time?

Q. I am speaking of the time when you were towing the burning vessel.

A. I don't know whether I did anything to that or not.

Q. Did you assist in repairing the tiller-rope on the occasion of the towing of this burning vessel?

A. I don't think I did.

Q. Who repaired that?

A. I think it was Mason, the wheelsman, and Kelland, who was a deck hand.

Q. Was that repaired inside or out?

A. I think it was repaired on the deck.

Q. Was it necessary to take the rope out of the sheave on that occasion?

A. No, sir.

Q. Was it necessary to steady the wheel in any manner during that time; could it be steadied?

A. Yes, sir; it could be hove hard over the contrary way.

Q. And held there while repairing?

A. It could be held, if we wanted it. I don't remember whether it was held there or not.

Q. Who held the wheel during the time you were repairing the rope?

A. I think I did it myself.

Q. Don't you remember?

A. No, sir; not exactly; I did not. The wheel-ropes were slack enough to have done that without anybody to hold the wheel.

Q. Where did you keep this large hawser?

A. On the rack.

101 Q. Where is that?

A. On the stern of the boat.

Q. When you arrived at the burning schooner, was there any other boat there at the time?

A. No, sir.

Q. How soon after that did the other boats come?

A. Steamboat or small boat?

Q. Steamboat.

A. I cannot say how long afterward.

Q. Was there any other boat came there?

A. A ferry-boat came there.

Q. How many?

A. One.

Q. Did that boat throw water?

A. Yes, sir; she put on a stream of water.

Q. Do you know whether she came before or after you?

A. I know she came after. She came alongside of us. She could not very well get inside of us.

Re-direct examination:

Q. Do you recollect whether the hawser was attached the third time, or was hauled in onto the deck, before it was attached the fourth time to the ferry-boat?

A. No, sir; it was hauled in onto the deck the fourth time altogether.

Q. After it was cut?

A. After it was cut.

Q. Was it hauled in after it was parted the third time, so that you could see the end?

A. No, sir.

By the court:

Q. I don't see how you could have fastened it the fourth time, if it was not hauled in the third time?

A. The boat picked it up in the water and took and fastened it. It was a Manila hawser.

Q. A little boat picked it up and carried it to the ferry-boat?

A. Yes, sir.

102 Q. That was while the ferry-boat was afoul of the schooner?

A. Yes, sir.

JOHN M. MASON, a witness on behalf of the libellants, being recalled, further testifies:

By Mr. Van Santvoord:

Q. You have testified that you were wheelsman?

A. Yes, sir.

Q. Do you recollect any accident happening to the steering-gear of the tug?

A. Yes, sir.

Q. What was the nature of the accident?

A. One of the strands of the wheel-rope became parted, and the yarns jammed in the sheaves of the block.

Q. In that part of the wheel between the pilot-house and which sheave?

A. The sheave on the plank sheer of the boat, where the rope turned to go aft.

Q. Did you assist in repairing it?

A. Yes, sir.

Q. How was it done?

A. It was done by just taking the end through and cutting it off, on each end.

Q. How long a time did it take?

A. Probably a minute or a minute and a half, at the outside.

Q. When was that?

A. I think it was while we had the third hawser, and before or just before we took the third hawser to her, or while we had the third hawser to the ferry-boat. I don't recollect which.

Q. Was it before the hawser parted the third time?

A. Yes, sir; I am positive of that.

Q. Was there any difficulty with the steering-gear after the third hawser parted, and the ferry-boat began to drift?

A. No, sir; none at all.

Q. There was no delay from any such cause?

103 A. No, sir.

Q. Had you seen the ropes that were used on board this tug, and handled them any time before?

A. Yes, sir.

Q. You had seen them, and you had handled them?

A. Yes, sir.

Q. What was the character of these ropes?

A. They are five-inch ropes, very near new. They were not over six weeks old, either of them. One of them was newer than the other, and had not been used. There were two used to make the boat fast, and the other was a spare one.

Q. What sort of hawsers were attached to the boat while in the slip?

A. These five-inch hawsers.

Q. What one when the boat was hauled off the bark?

A. A five-inch hawser then.

Q. What sort of a hawser was taken to her the third time?

A. The third time, I think it was a seven-inch hawser?

Q. Did you see the ends of either of these hawsers when brought in from the ferry-boat?

A. Not at the time, but I saw them the next day.

Q. Did you notice the ends of these small hawsers?

A. I noticed the next day they were burned.

Q. That is, the two hawsers first used?

A. Yes, sir.

Q. Did you see the end of the last hawser that was attached the fourth time to the ferry-boat after it parted?

A. No, sir; I did not see the end of it until the next day, then I saw where it had been cut.

Q. But you did not see the end which had been attached to the ferry-boat when it parted from the ferry-boat, previous to the ferry-boat drifting on the schooner?

A. No, sir.

Cross-examination by Mr. Owen:

Q. When the hawser parted the first time who attached the hawser again to the ferry-boat?

104 A. I think one of the deck-hands helped, a fireman or one of the ferry employees.

Q. One of your deck-hands?

A. Yes, sir.

Q. Helped the fireman of your boat?

A. Either one of the fire department, or one of the employees of the ferry company.

Q. How did they do that?

A. They went to the bow of the ferry-boat on a ladder from our boat.

Q. Did they attach the rope to the same bitt, or whatever it is called, that they had attached it to before?

A. I cannot say whether it was the same one or not. It was one similar.

Q. Who attached the line to the ferry-boat the second time?

A. That was the second time I am speaking of when they went with it on the ladder. The first time it was made fast was when the ferry-boat laid in the slip; I did that.

Q. And it parted afterward?

A. Yes, sir.

Q. Who made it fast then?

A. One of the deck-hands and this strange man.

Q. (By the court.) That was at the bark?

A. Yes, sir.

Q. And the next occasion, which would be the third time, who made it fast?

A. Strange men to me—men in the boat—men in the small boat—in this life-boat.

Q. Went off to her?

A. Went off from our boat, either the firemen or men in the employment of the ferry company.

Q. Did you see them carry that line?

A. I saw them go in the boat.

Q. Who made the hawser fast on the next occasion?

A. The same parties, I believe—men in the boat.

Q. You saw it done?

A. By men going to it in the boat.

Q. You did not assist in making it fast at any time?

105 A. Except the first time when she lay in the slip.

Q. What particular backing and going forward was there connected with the navigation of your tug from the time you first made fast to the boat in the slip?

A. Considerable backing and filling to get around in position, and get hold of the boat; after we became separated, we had to go back and fill to get hold of her.

Q. And when you got hold of her you moved off regularly, I suppose?

A. Yes, sir.

Q. When you came back to the schooner to put out the fire, had any other ferry-boat reached her?

A. Yes, sir.

Redirect-examination:

Q. Do you know whether there is any objection to the use of chains around the barrel of a wheel while boats are going in and out of the harbor?

A. Yes; we don't like to put a chain in the pilot-house on account of the attraction of the compass.

Q. Where boats are in that service, what is usual and regular in reference to the material to be used about the barrel of a similar wheel?

A. It is a usual thing to have ropes; there are some few that use hide rope.

PATRICK GANNON, a witness called on behalf of libellant, being duly sworn, testifies:

By Mr. Van Santvoord:

Q. Were you one of the deck-hands on the Clara Clarita, in August, 1870?

A. Yes, sir.

Q. At the time she went over to Hoboken?

A. Yes, sir.

Q. And towed out the ferry-boat?

A. Yes, sir.

Q. Had you seen and handled those tow-ropes?

A. Yes, sir, I had.

106 Q. How long had you been on board of the Clara Clarita?

A. I guess I had been there eight months.

Q. Then you were a deck-hand on her while she was in the employment of the Pacific Mail Steamship Company?

A. Yes, sir.

Q. Had you often handled those hawsers which were used on the night this ferry-boat was towed out?

A. Yes, sir, I had.

Q. What was their character?

A. The hawsers were in good condition, pretty near new. They had been used, I believe, four or five weeks.

Q. Did you see the ends of the hawsers that were used in towing the boat out from the end of the slip, and of the hawser that was used in towing the ferry-boat off from the bark?

A. Yes, sir, I did.

Q. You saw them at the time they were hauled in?

A. Yes, sir; they were burned.

Q. Those two hawsers were burned?

A. Yes, sir.

Q. Did you see the end of the third hawser that was attached?

A. No, sir; I don't believe it came aboard.

Cross-examination by Mr. Owen:

Q. Do you know when these hawsers were purchased?

A. I do not know exactly.

Q. Do you know what use they had been put to?

A. Yes, sir; they had been used for towing.

Q. Were they kept with the large hawser—in the same place?

A. No, sir, they were kept in their own place.

Q. Where was their place?

A. There is generally one or two of them up in the front—at least one in the front and one in the stern—one in the bow and one in the stern.

Q. Where was the large hawser kept?

107 A. It was kept in the stern.

Q. Do you know why the large hawser was not used in the first place in the dock.

A. They thought these others——

Q. Have you any knowledge?

A. No, sir, I have not.

Q. Do you know how many steamboats there were assisting in putting out the fire on the schooner?

A. We were the first one there, and commenced to play on the schooner; then this ferry-boat came and stayed for some time, and then went away.

Q. The ferry-boat played on the schooner also?

A. A little while—not very long.

WILLIAM KELLAND, a witness called on behalf of libellants, being duly sworn, testifies:

By Mr. Van Santvoord:

Q. Were you a deck-hand on the tug-boat Clara Clarita in 1870?

A. I was.

Q. At the time she went to Hoboken?

A. Yes, sir.

Q. And towed the burning ferry-boat out of the slip?

A. Yes, sir.

Q. Did you see the end of the first hawser after it parted from the ferry-boat?

A. Yes, sir.

Q. What was its condition?
A. It was burned.
Q. Did you see the end of the second hawser?
A. I did.
Q. What was its condition?
A. That was burned also.
Q. Do you know what hawser was taken to the ferry-boat, after the second burning of the hawsers?
A. The third time the hawser was passed, it was the seven-inch hawser, always coiled up in the stern of the Clara Clarita.
108 Did you assist in taking that hawser?
A. I did.
Q. Was that same hawser used the fourth time?
A. It was.
Q. Had you handled these hawsers often?
A. I had.
Q. What was their condition?
A. There were four hawsers, three of them five-inch and one seven or eight inch; I could not say which. Of the three five-inch hawsers, one of them was brand new. The line had never been used before. The other two were brought aboard at the same time, and had been used very little—very few days. They were nearly new. The big hawser was hardly worn any to speak of.

Cross-examination by Mr. Owen:

Q. Did you assist in making the hawser fast?
A. I did, each time.
Q. Did you make it fast at the same place, each time?
A. No, sir; the boat turned around the second time, and we made it fast at the other end.
Q. To what did you make it fast?
A. It was passed the second time through one of the chocks, and hitched twice. I passed the hitches myself.
Q. (By the court:) The other end of the ferry-boat.
A. The other end of the ferry-boat—the end that had not got afire.
Q. How soon after you started out from the slip did the fire break out?
A. Shortly after we got out from the slip she was enwrapt in flames. As far as I could see, all her joiner-work took fire.
Q. How far had you got out then?
A. A very little ways. I should judge 150 to 200 yards outside the ferry-slip.
Q. Had you begun to swing up the river?
A. Yes, sir, a very little.
109 Q. The fire didn't break out until you begun to swing around?
A. I don't think we had hardly begun turning round. I do not think our wheel was putting the boat around to the tide up the river.
Q. When the fire broke out?
A. Yes, sir.
Q. Where did it break out?
A. I think it took the whole light joiner-work at once, pretty much. It worked to the end, but it began amidships.
Q. Was it an iron cleat or a wooden cleat on the ferry-boat?
A. I think it was an iron cleat; in fact I know it was.
Q. After this did you make fast to the same end of the ferry-boat?
A. No, sir; at the other end.

Q. After you changed, did you continue to make fast to that end?
A. Not to the end in the first place. It was made fast a little nearer amidships—the next chock. I think there were two on the ferry-boat.
Q. What time was that?
A. That was the third time it was made fast.
Q. Which side of the ferry-boat, as you were going along—the starboard or port?
A. She was very nearly ahead of us—that is, lapped on to her. It was the port side, I think.
Q. What length of hawser did you tow by?
A. I think 75 fathoms—very little more, if anything.
Q. How long after your hawser parted the third time was it before the boat drifted down upon the schooner?
A. Five or six minutes, I think.

Redirect examination:

Q. Did you take the hawser to the ferry-boat the third time it was taken—that is, after the hawser burned the second time?
110 A. I assisted to do so.
Q. The big hawser?
A. Yes, sir; the big hawser.
Q. Did you follow it to the ferry-boat?
A. No, sir; I offered my services to those in the boat, but they would not accept them. The boat was crowded, and they had sufficient without me.
Q. Who were they?
A. They wore the uniform of the Hoboken Fire Department, and I think one or two belonged to the Ferry Company.
Q. You offered your services?
A. I did, by Captain Francis's orders.
Q. They declined to accept them?
A. They did.
Q. The crew that took the hawser belonged to the Ferry Company and the Fire Department?
A. Yes, sir.

Recross-examination:

Q. You don't know who took the hawser?
A. I cannot say I am personally acquainted with the party.
Q. You did not know their names?
A. I don't know any of them.
Q. Have you seen them in court here?
A. I have not been in court but the first and second days.
Q. Were they here then?
A. I did not see them.

Libellants rest.

AUGUSTUS M. COX, a witness called on behalf of the claimants, being duly sworn, testifies:

By Mr. Owen:

Q. Are you one of the owners of the schooner Clara?
A. Yes, sir.
Q. How long had you been part owner?
111 A. It is two years the 25th of last July, I think. I will not be positive.
Q. Were you master also?

A. Yes, sir.
Q. In what trade was she engaged?
A. The coal trade, between Georgetown and Baltimore and New York.
Q. How large a vessel is she?
A. She is from 350 to 360 tons.
Q. She is a two-masted schooner?
A. Yes, sir.
Q. When did you arrive in this port with a cargo before the fire?
A. I disremember the date.
Q. Where did you discharge that cargo?
A. I don't know positively whether at Thirty-second or Thirty-first street. It was the Hudson River Railroad depot, at any rate.
Q. After you had discharged where did you proceed with your vessel and anchor?
A. We anchored right abreast of the dock, in the river, about half of the way across, or it might have been more than that.
Q. Was that the same day the evening of which it was burned?
A. It was in the afternoon we hauled off, and at night she was burned.
Q. Were you on board that night?
A. Yes, sir.
Q. What time did you turn in?
A. About half past nine.
Q. Was any light set?
A. Yes, sir.
Q. Where and how?
A. In the starboard fore-rigging; I suppose, probably, 15 or 20 feet high from the deck.
Q. Did you see that light after the fire?
A. Yes, sir.
Q. Was it burning still?
112 A. Yes, sir.
Q. What anchor had you out?
A. The small anchor—the port anchor.
Q. How many fathom of chain?
A. About 20 fathom.
Q. How much chain had you below—what was the length of the balance of the chain?
A. Sixty fathom, altogether.
Q. Was there any person left on deck that night?
A. Yes, sir; one man.
Q. Was he staying as a watch on deck?
A. I don't think he was staying as a watch. I cannot tell.
Q. Is it usual or customary for vessels of your size to have an anchor-watch?
A. No, sir; not there.
Q. How was the weather that night?
A. The weather was clear; the wind was to the southward—south-southwest.
Q. Any prospect of a storm?
A. No, sir.
Q. It was a light, starlight night?
A. Yes, sir.
Q. Have you ever yourself been accustomed to have an anchor-watch when you lay at anchor here?

A. No, sir.
Q. Nor other schooners, to your knowledge?
A. No, sir; I have known them to keep a watch during the war, when loaded with hay, but no other time.
Q. What first called your attention to the burning boat?
A. I heard somebody calling "aboard the schooner."
Q. Where were you at that time?
A. I was in my berth.
Q. What did you do?
A. I ran out.
Q. When you got out what did you see? Did you have on your clothes?
A. No, sir; I had my shirt on.
Q. Who ran out with you?
113 A. The mate, who came shortly after me, but not with me.
Q. The rest of the crew were forward?
A. Yes, all but the cook.
Q. (By the court:) Where was he?
A. In his berth.
Q. In the state-room with you?
A. Not with me, but in his state-room.
Q. Where was this man you left on deck?
A. He was lying on the centre-house asleep, when I got out.
Q. He was on deck when you came out, and you saw him?
A. Yes, sir.
Q. How far was the burning boat from you at that time?
A. She was right under the end of our jib-boom; she had not collided with us; she had not struck when we got on deck.
Q. How did she drift down upon you—what part of her struck you first, do you think?
A. Right in the centre of her, as near as I can tell.
Q. Your jib-boom took her centre?
A. Yes, sir.
Q. What effect did that have?
A. She stayed there and burned.
Q. What did she set fire to first?
A. She set fire to our head-sails, rigging, jib-boom, bow-sprit, the vessel's hull, the foremast, and the foresail.
Q. How long did she hang on to your vessel before getting off?
A. I cannot tell exactly; at any rate, while we were gone for an axe on board of the other boat, and back again; I suppose it might have been five minutes, and it may have been more. It was all of five minutes.
Q. What was the first thing you did on the schooner when you saw the condition of things?
A. The first thing I did was to lower the boat, and go for an axe to scuttle the vessel.
Q. Did you all get into the boat?
114 A. Yes. The rest of the crew came into the boat. I and the mate got over first.
Q. In what direction from you did the tug-boat lie at the time?
A. She laid to the westward of us—south-westward like.
Q. How far did you have to row?
A. I could not exactly tell—no further than from here out to the street.
Q. Did you get an axe?
A. Yes, sir.

Q. Did you tell them what you wanted to do with the axe?
A. Yes, sir.
Q. What?
A. I wanted to scuttle the vessel.
Q. How did it happen you had no axe?
A. The axe was forward, I suppose.
Q. Had you an axe?
A. Yes, sir. The axe was broken the day before.
Q. It was forward where the fire was?
A. Yes, sir.
Q. How broken?
A. There was one-third of it broken out of the corner by a flaw in it.
Q. So that you had no axe to scuttle her with?
A. No, sir.
Q. When you told them that you wanted an axe to scuttle the vessel with, did you at that time intend to abandon the boat, or go back to her?
A. Go back and scuttle her.
Q. What passed between you and the captain of the tug, or anybody on board?
A. I don't know whether it was the captain or not, but some one told me not to scuttle the vessel; that they would put the fire out.
Q. Then you returned on board of your schooner?
A. Yes, sir.
Q. How did you do, lay around or go aboard of her?
A. I went aboard of her.
115 Q. All of you?
A. Yes, sir; all but one man, who was the negro cook, who staid in the boat.
Q. Were you on board at the time the tug came back to the schooner?
A. No, sir.
Q. Where were you?
A. I went down in the life-boat again.
Q. Why had you left the deck?
A. I had valuable things I wanted to take care of. There were other boats around—river boats—and I wanted to attend to those things.
Q. Had you left the schooner with any intention of not returning to her?
A. No, sir.
Q. How many steamboats assisted in putting out the fire?
A. Two.
Q. Which arrived first and began to assist you first?
A. I cannot tell; I disremember about that; but I think the James Rumsey got her hawser on ahead of the other boat; I will not be positive, but I cannot tell.
Q. How long did they play on the fire, do you think, before they got it down?
A. The James Rumsey played on the fire until she got it subdued, until the blaze was down, and then she went away.
Q. Did the other remain longer?
A. Yes, sir.
Q. After the fire was subdued, what was done with your schooner?
A. She still laid there.
Q. At anchor?
A. With both anchors.
Q. It has been said here that, lying at anchor as you were with your

schooner, and putting the wheel one way or the other and sheering the schooner, could have avoided this burning vessel?

A. She could not.

116 Q. State why.

A. She had not enough chain; and even if she had, she could not have done so with that strength of the tide. She could not have taughtened up that chain to have sheered her any distance.

Q. Would she have sheered as readily as a loaded vessel?

A. No, sir.

Q. Suppose you had been on deck with a sufficient number of hands, could you have slipped the cable?

A. Not very well; they were shackled together. We could have slipped it, of course.

Q. What time do you think it would require?

A. I cannot tell how long it would have taken to take the bolt out of the shackles.

Q. Was there anything you could have done if you had been on deck by which you could have avoided that burning boat?

A. No, sir; if we had been on deck, we would have supposed the boat that had the burning raft in tow was taking care of her.

Q. Had you returned to the schooner with ax before they came and made fast to the ferry-boat?

A. Yes, sir.

Q. What interest had you in the vessel?

A. I owned one quarter of her.

Q. Was that a common interest, or a captain's interest, as it is called?

A. A captain's interest. I bought it as a captain's interest. I bought it from the other captain.

Q. Had any portion of that vessel been sold within a few months previous?

A. Yes, sir.

Q. What proportion?

A. One-quarter of her, three months before.

By the court:

Q. Do you mean your quarter?

A. No, sir.

Q. What did it bring?

117 (Objected to, as being too remote to bear upon the question of value. Objection overruled. Libellant's counsel excepts.)

A. At the rate of $8,000.

By the court:

Q. Do you mean one-quarter sold for $8,000?

A. No, sir. One-quarter sold for $2,000, which makes it at the rate of $8,000 for the whole.

Q. What do you think the vessel was worth just before the accident? (Objected to. Question withdrawn.)

Cross-examination by Mr. Van Santvoord:

Q. What were the circumstances of the sale of that quarter—who sold it?

A. It was parties in Philadelphia; I forget their names.

Q. Do you know who sold it?

A. I have seen the man, but I have forgotten. I could tell by looking at the papers.

Q. The sale was made in Philadelphia?

A. Yes, sir.

Q. What induced it? Do you know?
A. No, sir, I do not.
Q. Do you consider yourself as competent a seaman as the mate?
A. I do not know much about his skill.
Q. I mean the mate of your vessel?
A. He has been going to sea longer than I have, but I consider myself competent.
Q. But he is more competent?
A. I do not know whether he is or not. Sometimes when a man goes to sea too long he gets weather-wise.
Q. If he could have sheered that vessel in that tide, and slipped the cable, could you have done it?
A. I do not think I could have done it. I do not know. He might think he could.
Q. When you came out, did I understand you to say that this man who had been left on deck was asleep?
118 A. He was lying down. I suppose he was asleep.
Q. Where was the rest of the crew?
A. One man was lying in the forecastle, as I understood afterward.
Q. Did you see anybody?
A. No, sir; I did not see anybody.
Q. Where was the other?
A. I suppose he was there. I did not see only this one man.
Q. Who was this man who was on deck, and slept on the centre-board—was that one of these Germans?
A. He was not asleep on the centre-board. I cannot say that he was asleep, but I suppose he was, on the centre-house.
Q. Was that one of these Germans who had come on board?
A. No, sir.
Q. Who was he?
A. He was a sailor.
Q. How long had he been on that vessel?
A. I don't remember now, but he had been some four or five trips.

By the court:

Q. This man you say was asleep on the centre-house; was he the man who had hallooed?
A. No, sir.
Q. Who was he?
A. I suppose it was one of the men on board the James Rumsey, the ferry-boat that steamed up.
Q. But you said a man hallooed, "On board the schooner?"
A. "Aboard the schooner;" that was the words they said.
Q. Who do you think it was—some one on the James Rumsey?
A. Some on the James Rumsey, because she was steaming up close to us.
Q. At that moment?
119 A. Yes, sir; and I came out.
Q. She was nearer to the burning ferry-boat?
A. No, sir.
Q. Do you remember whether it was on the James Rumsey or the tug-boat?
A. I cannot say, but I think it was on the James Rumsey.

By Mr. Van Santvoord, resuming:

Q. At the time the tug Clarita was playing on your boat, when you saw her, on which side of you was she?

A. She was on the starboard side.
Q. Was she lashed to your starboard side?
A. Forward she was. She had a line running out forward.
Q. When the James Rumsey came there, was she not outside of the tug?
A. Yes, sir, at first; but then she went to the other side.
Q. On the port side?

Redirect-examination:

Q. About how far did they tow the ferry-boat off from you before she sank?
A. I don't know; but I should think from what I could see that when she sank she was 300 or 400 yards—it may be 500 yards.
Case closed.

120 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-one:

Present: The Honorable Samuel Blatchford, district judge.

AUGUSTUS M. COX ET AL.
vs.
THE STEAM-TUG CLARA CLARITA, ETC.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants recover in this action against the steam-tug Clara Clarita, her tackle, etc., the damages by them sustained by reason of the collision in the libel set forth, with their costs to be taxed. And that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

SAMUEL BLATCHFORD.

(Indorsed:) Vol. 23, No. 418. United States district court for the southern district of New York. Augustus M. Cox et al. vs. The Steam-tug Clara Clarita, etc. Owen, Nash & Gray, proctors for libellants. Inty. decree and order of reference. Filed the 15th day of November, 1871.

121 *Notice of reference.*

District court of the United States for the southern district of New York.

AUGUSTUS M. COX ET AL.
vs.
THE STEAM-TUG CLARA CLARTA, HER ENGINE, etc.

In conformity with the order entered in the above-entitled cause, you will please to take notice that the reference ordered therein will be proceeded with, before me, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office, at the United States court buildings, at 41 Cham-

bers street, in the city of New York, on the second day of December, at eleven o'clock in the forenoon of that day, at which time and place you are hereby notified to attend, with the testimony you may have to offer in the matter referred.

Dated, New York, the 28th day of November, A. D. 1871. Yours, etc.

JOHN A. OSBORN,
United States Commissioner, duly appointed by the circuit court of the United States for the southern district of New York in the second circuit.

(Indorsed:) United States district court. Augustus M. Cox et al. vs. The Steam-tug Clara Clarita, etc. Notice of reference. Owen, Nash & Gray, proctors for libellants. Due service of a copy of the within notice admitted this 28th day of November, 1871. C. Van Santvoord, claimants' proctor.

122 United States district court, southern district of New York.

AUGUSTUS M. COX ET AL.
vs.
THE STEAM-TUG CLARA CLARITA, ETC.

December 7, 1871.

Pursuant to order and notice of referee—present, proctors for respective parties, and the libellants call as a witness Gilbert H. Ferris, who, being duly sworn, says: I have a ship-yard for building and repairing vessels at Erie Basin, Brooklyn. I know the schooner Clara. I made repairs on her at my yard in August, 1870. (Bill shown witness, Exhibit A.) This is my bill rendered for the repairs done to the schooner Clara. It has been paid. Bill is $1,482.82, less 5 per cent., $74.15, leaving the amount $1,408.67 to be reported.

The items were actually furnished, and the prices were fair and reasonable charges. I think the vessel came to the yard about the last of July or first of August. I examined her. Her bows were nearly all gone from the deck to five or six feet below the plank-shear. She looked as if she had been on fire. The wood was charred. The spars were all gone, the rails on both sides some thirty feet were gone, stanchions were gone, bulwarks were gone. The deck forward gone. The repairs made upon her were absolutely necessary to make her seaworthy. Nothing was done upon her but to repair the damage made necessary by a fire.

Cross:

I superintended the work; I was there every day.

123 Recross:

Q. Will you look over that bill, Exhibit "A," and see if there are not some items not necessary to repair the damage caused by the fire?

A. I see only one item; that is hauling her out on the dock. Those repairs could have been made without hauling her out on the dock. There are no charges on the bill for calking or other work on the bottom of the vessel. I consider these charges reasonable, usual prices.

Redirect:

She was hauled out on dock because her bottom became foul.

Recross:

The work on this schooner was pressed up; had as strong a force as could work to advantage. I was employed by the captain to do these repairs. There was pressure for dispatch on the part of the owners to do this work. There was no delay from other work in our yard.

Redirect:

The vessel was hauled out about the time the vessel was completed. Nothing else was done on the dock beside cleaning her bottom.

The usual custom is to clean the vessel's bottom about once in ten months. If the Clara's bottom had been cleaned four or five weeks before this trouble it would not have been necessary to clean it.

The fact of her lying at my yard three or four weeks would make it necessary to clean her bottom at that season.

Recross:

I don't know whether her bottom became foul while lying at my yard or not. I did not examine her bottom when she came there. Still water accumulates barnacles.

GILBERT H. FERRIS.

Subscribed and sworn to before me this 7th day of December, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

124 AUGUSTUS M. COX, sworn, says:

I am one of the libellants. I was captain of the schooner, and was on board at the time she was set on fire by the ferry-boat James Watt. As near as I can tell, it was about half past eleven at night, on 1st of August. I remained on board of her all night after the fire was put out.

The next morning I went and got a port-warden, and he examined her while she lay in the stream. The next day (second day after disaster) we got our anchors and chains, which had fallen off the bow, cleared up the decks a little.

The foremast was burnt, bowsprit, jib-boom, martingales, fore-boom, and fore-gaft, and the decks, in between decks, bitts, rail, bulwarks, cleats, and cavils, and the outside plank forward, were burned and destroyed.

Our mainmast, by the burning of the spring-stay, fell back and cracked in three places; our fore-sail, fore-topsail, and three jibs were burned entirely up; main-sail was burned so as not to be fit for use. All of our head-stays and fore-rigging, and all the dead-eyes were burnt; all her running-rigging on her foremast, and her lines were burnt. Her ship-stores were not burnt. After she was burnt, she remained at the same place for about five days. Then we got a tow-boat and towed her to Thorburn & Waterbury's spar-yard, East River. I paid the towage bill. (Bill shown witness.) This is the bill, marked Exhibit "B," amount of bill $10, put in evidence. At the spar-yard the riggers and myself took out her bowsprit, next took out her foremast and mainmast. I think we were there three days taking out the spars and masts. The bill for this work was presented to me, and I paid on account $20. We then employed another tow-boat and towed her to Mr. Ferris's ship-yard. I have the bill, dated August 8th; amount $10. I paid it myself. Put in evidence, marked Exhibit "D." Exhibit "C," for identification, shown witness.

At Ferris's yard, Erie Basin, where we arrived about the 12th of August, the first thing done was tearing out the burnt stuff. I helped to do it; and

then the carpenters went to work to put in new material where it was
125 burnt. Some of the blacksmith's work was done there. All the carpenter's work was done there except a few cleats, and the fastening down taffrail; then we hired another boat and towed her back to the spar-yard.

(A bill shown witness.)

This is the bill for towage from Erie basin to spar-yard, $10. (Bill put in evidence, marked Exhibit "E," J. A. O.)

At the spar-yard they went to work putting in the spars, and were engaged about a week putting in the spars and putting on the cleats. After this, the riggers went to fitting the rigging, setting up masts, and after she was thoroughly rigged we commenced bending sails on the 10th day of September. There were a new suit of sails made for the vessel. S. S. & I. O. Thorpe furnished the suit. I went to see the sail-makers, to see how much it would cost. There were no sails made except to replace those burnt by the fire. The capstan was broken, and it was necessary to buy a new one. Bought it at the Eckford Iron-works. I ordered it.

Thorburn & Waterbury paid a wharfage bill at the spar-yard. The bill of merchants' police was for watching the vessel at the spar-yard; amount $20. I paid it. (Put in evidence, marked Exhibit "F," J. A. O.)

(Bill of Collins & Ryan shown witness.) This bill is for scraping and painting the vessel where she was damaged by the fire, $56.) I paid it. (Put in evidence, marked Exhibit "G," J. A. O.)

(Bill of Van Every & Co., amount $1.76.) Exhibit "H," J. A. O. I paid it. The forward pump was damaged by the fire and the block damaged.

There was no new pump bought, the old one was repaired.

There was work done by Yoe & Fearis, which was necessary by the fire.

Nelson Hopkins has a bill, and the items mentioned therein were necessary.

Knight's bill shown witness, and the items mentioned therein were necessary. I ordered the work done, and it consisted of bolts, shackles, etc.

126 The vessel was burnt on the first night of August, 1870, and we left the dock 10th of September, 1870. When we left the dock the fore-sail and main jib-sail had been bent on. I have owned in vessels about five years, like the Clara—coasting-vessels.

I have been accustomed to charter my own vessel. We were engaged in carrying coal from Georgetown to New York and other northern ports. I was engaged principally for the Maryland Coal Company.

Q. What could you have chartered your vessel for per day at the time of the disaster?

A. That I could not tell, as it is very seldom that vessels were chartered in that business.

She carried from 350 to 360 tons of coal, when full.

The usual rate of demurrage was 8 cents per ton.

My running expenses per day were about $12.

I retained the mate on board, and paid him $40 per month and boarded him. I was employed on the vessel during the time the vessel was undergoing repairs. I charged $2.50 per day for my services.

I employed a cook at the rate of $35 per month, for three weeks.

Cross-examined:

The rate of demurrage I have named was for the summer of 1870

and I heard and knew of these rates applying to other vessels. I make up the $12 per day expense, calculating payments to crew, and expense of provisions. This new capstan was another man's make, but the old one was equally as good. The new sails were better than the old sails with the exception of the jib top-sail, which we had just bent on new the day of fire. Excepting the jib top-sail, all the other sails were as follows: The main-sail was two years old, fore-sail and jibs about a year old, fore-topsail about six months old. The old sails were Drury duck. The new sails were the same. The condition of the old sails: main-sails were in good condition; not chafed or worn.

127 Good cotton sails will last about four years. The new sails were worth more than half the old sails. The old rigging burnt was just as good as the new. There was no difference between the old and new sails as regards size or draught.

We could not get the vessel repaired any sooner than we did.

Redirect:

The old sails could not have been worked up for use again. There were no delays in making repairs.

AUGUSTUS M. COX.

Subscribed and sworn to before me this 7th day of December, 1871.
JOHN A. OSBORN,
United States Commissioner.

Adjourned to Tuesday, December 14, 1871, at 2 p. m.

DECEMBER 14, 1871.

Parties present.

James Knights, sworn, says: My business is blacksmith or ship-smith; have been in the business for sixteen years, No. 38 Corlears street. I know the schooner Clara; I did some work for her in August, 1870. I did the work myself. I rendered the bill and the bill has been paid. I have the bill; this is the bill.

The items in the bill are reasonable, and a fair price for materials and labor. Amount, $82.53.

(Bill offered in evidence, marked Exhibit J, J. A. O.)

Cross-examined:

This work was done on the schooner Clara. The principal part of the work was done at the shop, some on the vessel; what was done in the shop was done to the schooner. I don't know whether the repairs were made necessary by the burning of the schooner.

The work was done and materials furnished at the dates mentioned in the bill.

Re-direct:

128 There was work done about the bowsprit, some on the bow, and some on the fore-mast, some on the martingale center-board; the principal part of it was forward.

JAMES KNIGHTS.

Subscribed and sworn to before me this 14th day of December, 1871.
JOHN A. OSBORN,
United States Commissioner.

GEORGE THORBURN, sworn, says:

I am in the spar-making business, firm Thorburn & Waterbury, corner of Corlears and Water streets. In August, 1870, it was at the same

place. I know the schooner Clara. We furnished her some spars and did some carpenter's work on her, which was left unfinished by those who had repaired.

The carpenter work consisted in fitting the cat-heads and fitting the capstan, putting some cleats, and putting two streaks under the wales. I saw the Clara lying off in the North River in her damaged condition.

The bill now shown me is our bill.

When we came to examine the spars, the fore-boom and fore-gaft would answer; but when we came to unbend them and roll them over, we found that they were burnt in so far that we condemned them, and she would have to have new spars.

Al lthe spars furnished to the Clara were made necessary by reason of the fire.

The items were furnished, and the prices are fair and reasonable charges. The bill has been paid, $930.08.

(It is offered in evidence, marked Exhibit K, J. A. O.) This bill contains the carpenter work we did on the vessel.

We paid two wharfage bills for the Clara. One is that of Ezra Quimby, $4.48, and this is the bill shown me, put in evidence, Exhibit L, J. A. O. This bill was necessary. The bill to stone paving company, $24.75, for wharfage, was paid by us, and was incurred by us while putting in the spars. Put in evidence, marked Exhibit M, J. A. O. The owners paid us the amount of the wharfage bills.

The bill Exhibit L was incurred a few days before putting in the spars.

129 Cross-examined:

The masts would be worth	$225	apiece.
The bowsprit, including cab and bee	130	
Jib-boom	45	
Fore-boom	28	
Gaff	22	
Locust-martingale	12	
	$687	

This includes the labor and the cost of the material.

We made an estimate, and the amount in the bill is the estimate. And there was no work done there on the vessel except what was necessary by the fire.

GEORGE THORBURN.

Subscribed and sworn to before me, this 14th day of December, 1871.
JOHN A. OSBORN, *U. S. Commissioner.*

ISAAC O. THORPE, Jr., sworn, says:

I was connected with the firm of S. S. & I. O. Thorpe in August and September, 1870; they were sail-makers at 135 Rosevelt street.

Our firm furnished the Clara with sails in August, 1870; the main-sail was not delivered until some time in September; I think the sails were about two years old; the only sail we saw was the main-sail; the forward sails we did not see; we put some repairs at first on the main-sail so she could be used; we put on her foresail-jib, flying-jib, jib-top-sail, foregaft-topsail, and main-sail.

There were some little holes in the main-sail, and seemed to be rotten, whether from heat or age; we calculated that the main-sail was not old enough to be renewed; it seemed to be rotten. (Bill shown witness.) All the items in this bill were furnished by us, and the charges were fair

and reasonable prices; we have been paid this bill—$685.68—offered in evidence, marked Exhibit "N," J. A. O.

We made a couple of head-sails just before she went on this trip.

(Another bill shown witness.) This is the bill for the main-sail
130 furnished to the Clara; the charge is a proper and reasonable price. Put in evidence, marked Exhibit O, J. A. O.

Cross-examined:

In Exhibit N, the foresail-jib, flying-jib, jib-topsail, and foregaft-topsail, and not the main-sail, but some repairs done to it amounting to about $13.

I did not see any of the old sails replaced by the sails in Exhibit "N," J. A. O., except the jib-topsail, which I think we furnished just before the fire.

The main-sail was brought to our shop for repairs. It was about the 10th or 12th of August, we made slight repairs on it to the amount of about $13. The main-sail was rotten and there were holes in it, but cannot tell now where they were. There was no extensive burning, but there were several holes burnt in her. The patches were as large as the top of my hat. That sail after it was patched was used by the Clara.

The other sails went away about the 20th of August, and this main-sail repaired went with them. It was afterward brought back on the delivery of the new main-sail. Ex. O contains the charges for the new main-sail; it was delivered about the 30th of September, 1870. We have nothing to do with the bending of the sails. We deliver them to the parties. This bill Ex. O includes nothing but the new main-sail.

Re-direct:

Q. State what effect fire, or exposure to fire, would have on the sails. (Objected to.)

A. If it was close enough to the fire it would damage it in some way, and it would crisp it. If the sail should be wet and then exposed to heat it would mildew it and cause it to rot. If it were subjected to heat and wet often it would make it unseaworthy. If the sail was rotten, it would be liable to give way at any time.

I don't remember what the condition of the main-sail was when it came back the second time.

131 Re-cross-examined:

Q. Do you think that a sound sail, wet, then dried from exposure to heat, enough to dry it, would become rotten at once by that process?

A. No, sir; but I think that a roll of canvas wet through and dried again, and then wet at a fire, would be damaged. I never tried that experiment.

Q. What experience have you had which enables you to form a judgment as to this effect of wetting and drying?

A. I judge it from what we call mildew from sails that have come into the sail-loft, that have been exposed to wet and then heat, have become mildewed. I mean to say that a hot sun coming on to a wet sail will cause a steam to arise that will mildew the sails.

Q. It it not the wet in the mildew, and not the warmth, which has the effect to rot the sail?

A. What we mean by mildew in a sail is black spots in the sail, which is rotten.

Q. Would wetting and drying a sail have any more effect to rot it than wetting and drying a shirt?

(Objected to.)

A. I suppose not, if both were placed under same conditions, if one was as full of dirt as the other. Sails mildew when they are furled, not so much when they are spread out; this drying and wetting process when they are furled causes the mildew.

Q. Is not the way to prevent a sail from mildewing to dry it before it is furled?

A. Yes. If any sails get damp or wet and get the sun on them, will mildew unless they are covered.

ISAAC O. THORP, JR.

Subscribed and sworn to before me this 14th day of December, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

LEMUEL H. HOPKINS, sworn, says:

I am one of the libellants; my business is ship-chandlery, of the firm of Hopkins & Nelson, 192 West street, New York.

132 We furnished in August and September, 1870, the schooner Clara ship-stores, consisting of rigging, paint, canvas, yellow-metal, cordage, standing and running rigging. I saw the Clara shortly after the fire. I did not examine her damages. The items in this bill now shown me were furnished the Clara, and each item was made necessary by reason of the fire, unless it be paint. The charges are reasonable and fair. The amount of the bill $724.24, after deducting $68.75 charges for paint, etc., used on her bottom. The bill has been paid.

Cross-examined:

I am one of the owners of this vessel, one of the managing owners in New York.

Q. Were all the articles furnished in this bill used to replace those lost by the fire?

A. There is an item of kerosene-oil which I don't know was lost by the fire; also, items of boiled oil—that is, pain-toil. These two items amount to $14.45.

This boiled oil was part of the material used for painting.

The rope was for rigging; none on the bill which was not furnished for rigging. There is no cable charge. There is no rigging or extras beyond her former equipment that I know of in the bill.

There is a fair profit on the articles, the same as we charge to others.

Redirect:

Put in evidence, marked Exhibit "P," J. A. O. I paid a bill to Yoe & Fearis, ship-smiths, $5.12. (Exhibit "Q," J. A. O.)

The bill of J. L. Evans, block and pump maker, $127.33, I paid. Put in evidence, Exhibit "R," J. A. O.

I paid all the bills except those which the captain paid.

Cross-examined:

This schooner was engaged in carrying coal between Alexandria, Georgetown, and New York. The captain settled the freights. I had nothing to do in engaging freight for her.

133 I know of several cases where vessels have received 8 cts. per ton on carrying-capacity demurrage—that is, gross demurrage. I don't know what the running-expenses are per day. I never figured them up.

L. H. HOPKINS.

PETER SCOTT, sworn, says:

I am a rigger, 217 West street. I was there in August and September, 1870. I know the schooner Clara. I did work on her in August, 1870. I took out her two masts and bowsprit, and put in new ones. The old ones were pretty well burnt. I fitted new rigging for the old rigging which was burned, and refitted all that was worth refitting that was not burnt too much. I rendered a bill for that service. Exhibit "C," J. A. O., is that bill. The items in that bill were necessary to repair damages caused by the fire. That bill contains nothing except what was necessary. The charges are fair and reasonable. The bill has been paid, $284.28.

Cross-examined:

I took out the old bowsprit, also the foremast, which were badly burned. The foremast burnt two or three inches into the wood. The damage to the mainmast was from her falling over, the stays being burnt. The mainmast was split. The mainmast was not broken off; it was sprung and checked, or cracked. The Clara was lying in the North River when I went aboard of her. All her spars were standing. The mainmast was standing, too. The foremast was badly burnt, but still standing. I did not examine the spars much, but the rigging. The splitting of the mainmast was caused by the spars falling back on it when the stays gave way.

There were five stays from the topmast and foremast to the bowsprit. As soon as all the stays to the bowsprit gave way the mainmast and foremast fell back together. I did the labor on the rigging, the foremast, mainmast, and bowsprit. The rigging on the bowsprit was all burned, and the rigging on the foremast was burned half way up on one side, and the rigging on the mainmast was scorched—that is, the shrouds. The shrouds were scorched on both sides. We took off the scorched shrouds and put new on. We used all the scorched
134 rope we could. I took two of the shrouds of the foremast, spliced them together, making one, and made two new ones.

I took the rigging off in August.

PETER SCOTT.

Subscribed and sworn to before me this 14th day of December, 1871.

JOHN A. OSBORN,
U. S. Commissioner.

(Bill of Eckford Iron-Works put in evidence, $58. Exhibit "S.")

Adjourned to December 16th, 1871, at two p. m.

EXHIBIT A. (J. A. O., U. S. C.)

BROOKLYN, *August* 27, 1870.

Schooner Clara, to G. H. Ferris, Dr., Brooklyn Floating-Dock, Erie Basin, Red Hook Point.

1870.				
Aug. 27.	To 297 lbs. bolts	*a*	12	$35 64
	fixing 26 bolts.....		6	1 56
	fixing 6 key-bolts.....		25	1 50
	fixing 3 chain-hooks.....		10	30
	1 key.....			6

		3 hoops on water-bucket		15	45
		283 lbs. spikes		10	28 50
		5,194 feet oak		8	415 52
		212½ days' work		3 75	796 88
		407 feet Ga. pine		6½	26 46
		1,376 feet deck-plank		6	82 56
		1 gall. oil			1 15
		pitch and mops			5 50
		37 pounds putty		6	2 22
		146 lbs. oakum		16	23 36
		hauling out			30 00
		7 hours, plumber		50	3 50
		2 lbs. solder		40	80
		15 lbs. nails		10	1 50
		31 lbs. sheet-lead		16	4 96
		2 sheets sand-paper		3	6
		1 paper brads			25
135	Aug. 27.	To 21 ps. 1¼ in. flooring		48	$10 08
		28 ps. narrow ceiling		32	8 96
		hardware			50
		1 piece walnut			75
					$1,482 82
	20.	Cr. by cash			250 00
					$1,232 82
		Less 5 per cent off			74 15
					$1,158 67

Received payment.

G. H. FERRIS.

[Stamp.]

EXHIBIT B. (J. A. O., U. S.)

NEW-YORK, *August* 8, 1870.

Masters and owners of Schooner Clara, to owners of steamboat Sarah A. Stevens, Dr. For towing from stream North River to Momtgomery street, East River, $10.

Correct. *Captain.*

Received payment for owners.

WILLIAM H. FOOTE.

Exhibit C for identification.—Exhibit C in evidence, (J. A. O.)

NEW YORK, *Sept.* 8, 1870.

Schooner Clara and owners, to Peter Scott, Dr.

To 66 4 9 days' work	*a*	4 00	$265 78
blocks and falls			7 50
cartage			11 00
			$284 28
By cash per Captain Cox			20 00
			$264 28

Received payment.

PETER SCOTT.

136 EXHIBIT D. (J. A. O.)

NEW YORK, *August* 10, 1870.

Schooner Clara and owners, to Propeller J. C. Gibbs, Dr. To towing from Corlears Hook to Erie Basin, $10.

Correct. *Captain.*

Received payment.
JOHN LANAER.

EXHIBIT E. (J. A. O.)

NEW YORK, *August*, 1870.

Schooner Clara and owners to steamboat Gorilla and owners, Dr., for services rendered from Red Hook, Erie Basin, to Spar-yard, Jackson street, E. R., $10.

Correct. *Captain.*

Received payment. J. BLOODGOOD.

EXHIBIT F. (J. A. O.)

NEW YORK, *September* 8, 1870.

Schooner Clara to Merchants' Police, Dr., Van Hoesen & Bro., proprietors. Office, 67 South street, one door below Pine, up-stairs. To watching vessel, etc., 10 nights, pier 54, Spar-yard, August 29, 30, 31, September 1, 2, 3, 4, 5, 6, 7,—10 nights, at $2—$20.

Received payment. VAN HOESEN & BRO.
J. A. PAUL.

EXHIBIT G. (J. A. O.)

BROOKLYN, *August* 27, 1870.

Schooner Clara and owners to George Collins and Thomas Ryan. To 16 days' work scraping and painting, $3.50—$56.

Received payment. GEORGE COLLINS.
THOMAS RYAN.

137 EXHIBIT H. (J. A. O.)

8 PECK SLIP, NEW YORK, *September* 3, 1870.

Schooner Clara and owners to Van Every & Co., Dr.

To 2 brass burners, at 25c		50
7 lbs. of common iron pipe, at 18c	1	26
Making elbow		50
	$2	26
		50
Paid. VAN EVERY & CO.	$1	76

EXHIBIT J. (J. A. O.)

Schooner Clara, Dr., to James Knight, blacksmith.

1870.		
Aug. 18. Cutting eye of band, rewelding same	$1	00
Repairing eye-bolt and ring		15
4 ⅜-rivets *a* 10c		40

		Strapping bowsprit-cap with 2 bands and 2 bolts, 102 lbs., *a* 16c	16 32
"	22.	Lengthening screw plate for heart on bowsprit, re-screwing	1 00
		Resetting two plates for chocks, for bowsprit shrouds, *a* 50c	1 00
		Altering and resetting large hoop for bowsprit, and re-fixing same	1 25
"	24.	Repairing, binding and fixing to bull's-eye, for bowsprit shrouds	50
		3 new keys *a* 12c	36
		3 rings *a* 5c	15
		Repairing cat harping hoop and making smaller; tapping 2 holes to fit screw	2 00
		1 $1\frac{3}{4}$-screw bolt and nut, for bowsprit hoop	1 25
"	27.	Beveled washer, 3 lbs., *a* 15c	45
		6 $\frac{3}{8}$-rivets, *a* 10c	60
		New screw end to eye-bolt and nut, repairing martingale hook	75
		2 $\frac{5}{8}$-bolts, 2 lbs., *a* 15c	30
138		Large key to centre bolt	25
		Length bolt for bail, 1 double key	40
		Repairing 5 bolts, *a* 10c	50
		7 $\frac{7}{8}$-bolts for chocks, 20 lbs, *a* 12c	2 40
"	29.	Cutting off head of bolts, labor and time, 3 hours, *a* 50c	1 50
"	30.	Backing bolt out of knightheads, 2 hours, *a* 50c	1 00
		Enlarging bands to cat-head	60
		New beveled band, 12 lbs., *a* 18c	2 16
"	31.	New binding to bull's-eye, 8 lbs., *a* 16c	1 28
		Length 2 eye-bolts for cat-head, 2 keys, 2 rings	60
		Repairing and resetting gammon to bowsprit, 35 lbs. new iron, *a* 7c	2 45
		Labor and fixing, $7\frac{1}{2}$ hours, *a* $1	7 50
Sept.	1.	2 bolts, keys and rings, 6 lbs., *a* 15c	90
		Bail for block, 4 lbs., *a* 18c	72
		Stropping 1 heart, new key, lining eye to band, shutting in ring	1 25
		4 $\frac{7}{8}$-bolts, 10 lbs., 6 $\frac{5}{8}$-bolts, 6 lbs	1 92
"	2.	Length bolt with ring	20
		2 beveled plates for gammon	50
		Refixing gammon to bowsprit, labor 5 hours, *a* 50c	2 50
		Making 3 $\frac{7}{8}$-bolts, *a* 10c	30
		Large key	20
		2 $\frac{7}{8}$-bolts, keys and rings, *a* 40c	80
		2 plates, *a* 15c	30
"	3.	6 $\frac{3}{4}$-bolts, 17 lbs., *a* 12c	2 04
		Repairing 3 ring-bolts, 3 new rings, *a* 15c	45
		2 $\frac{3}{4}$-ring-bolts, $6\frac{1}{2}$ lbs., *a* 18c	1 17
		2 thimbles for ditto, *a* 20c	40
		5 rings	20
		Repairing bolt, new key	20
"	4.	New patent stopper to cat-head, pins and chains, staples, complete	4 50
		Repairing stopper, new pins, chains and staples	1 00
		$2\frac{1}{2}$ lbs. nails, made to order, *a* 16c	40
139		Sept. 4, 1 long forelock shackle	$1 00

	1 lb. nails		16
	Making nail punch		10
	Long link to chain stopper		50
	Cutting and reshutting link		10
	1 $\frac{7}{8}$-bolt, 3$\frac{1}{2}$ lbs., at 12c		42
	1 1$\frac{1}{8}$ cleavers, eye-bolts, keys, links and ring, 15 lbs., *a* 18c	2	70
	1 $\frac{7}{8}$-bolt, 3$\frac{1}{2}$ lbs., at 12c		42
	2 $\frac{1}{2}$-inch bolts, with clinch rings, *a* 15c		30
	10 made nails for dogs, *a* 5c		50
	Repairing large screw-bolt and nut, and rescrewing		50
	Square bolt and nut		75
	Repairing 4 bolts, *a* 10c		40
	4 new rings		20
	1 $\frac{7}{8}$-ring and bolt, 5$\frac{1}{2}$ lbs., *a* 18c		99
" 5,	Repairing bolt, new key and ring		20
	Length 3 large ring-bolts and rings		60
	10 $\frac{3}{8}$-bolts, *a* 7c		70
	1 S hook		15
	Repairing old spikes		10
	1 $\frac{5}{8}$-bolt, key and ring		25
" 7,	4 blunt polts		40
	2 Scotchmen, *a* 50c	1	00
	Eye-bolt and hook, key and ring for tack, 8 lbs., *a* 18c	1	44
	New hoop to bucket		40
		$82	33

Received payment.

JAMES KNIGHT,
By THORBURN & WATERBURY.

EXHIBIT K. (J. A. O., U. S. C.)

NEW YORK, *August* 11, 1870.

Schooner Clara and Owners, to Thorburn & Waterbury., Dr., successors to A. Denike and Co., spar-makers, 740 Water street.

140	To new fore and main masts, bowsprit, jib-boom, fore boom and gaff, and locust martingale	$685	00
	To 298 feet oak for bowsprit cap bees, heel shore, gaff chock, saddle, cleets, and bed for capstan, *a* 9 cents per foot	26	82
	" 74 feet yellow pine for bow, *a* 9 cents	6	66
	" 198 feet white pine for mast, wedges, and use on board, *a* 6 cents	11	88
	" 97 lbs. bolts, spikes, and nails, for heel shore, saddles, cleets, and use on board, *a* 10 cents per lb	9	70
	" 9 lbs. galvanized nails, *a* 13 cents per lb	1	17
	" 58 lbs. lead for knightheads, *a* 14 cents per lb	8	12
	" 1$\frac{1}{2}$ lbs. composition nails, *a* 40 cents per lb		60
	" 45$\frac{1}{2}$ days' labor, *a* $3.75 per day	170	63
	" billet head	9	50
		$930	08

[Stamp.] Received payment.

THORBURN & WATERBURY.

EXHIBIT L. (J. A. O.)

NEW YORK, *August* 10, 1870.

Schooner Clara and owners to Ezra Quimby, Dr.

For 2 days' wharfage, inside, at $4.48 per day	$4 48
" " " outside, at $½ " "	

At Pier 54, E. R., Coe's stores.
Received payment.

THORBURN & WATERBURY,
For E. QUIMBY, *Collector.*

EXHIBIT M. (J. A. O.)

NEW YORK, *September* 9, 1870.

Schooner Clara, to Stow Paving Company, Dr.

141	To 11 days' wharfage, at half regular rates, from August 29 to September 9, inclusive, at $2.25 per day..	$27 00
	One day off	2 25
		$24 75

Received payment.

STOW PAVEMENT COMPANY,
[Stamp.] By THORBURN & WATERBURY.

EXHIBIT N. (J. A. O.)

NEW YORK, *August* 20, 1870.

Schooner Clara and owners to S. S. & I. O. Thorp, Dr.

For working up 936 yard of duck into 1 foresail, 1 jib, 1 flying-jib, 1 jib topsail, and 1 fore-gaff topsail, *a* 25c. per yard	$234 00
544 yds. Druid cotton duck, No. 1, *a* 49½c.	269 28
130 yds. " " No. 4, *a* 41c.	53 30
138 yds. " " No. 7, *a* 34c.	46 92
124 yds. " " No. 8, *a* 32c.	39 68
Repairing main-sail, 2½ days' work, *a* $3.50	8 75
2½ yds. cotton duck, No. 5, *a* 39c.	98
3 lbs. bolt rope, *a* 21c.	63
1 lb. waxed cotten twine	60
8 reef nettles, *a* 15c.—$1.20; 3 foot stops, *a* 22c.—60c.	1 86
3 yds. old cotton duck to cover luck rope, *a* 20c.	60
35 yds. cotton duck, No 1, for 2 tarpaulins, *a* 49½c.	17 33
Making tarpaulins, including twine	4 25
2 mast coats, *a* $2.25	4 50
Cartages, in and out	3 00
	$685 68

Received payment. S. S. & I. O THORP.

142 EXHIBIT O. (J. A. O.) Duplicate.

NEW YORK, *September* 30, 1870.

Schooner Clara and owners to S. S. & I. O. Thorp, Dr.

To working up 503 yds. of duck into new mainsail, *a* 25c. per yd	$125	75
503 yds. Drury cotton duck, No. 1, *a* 49c	246	47
Cartages, in and out	4	00
	$376	22
Cr. by old mainsail, 670 lbs., *a* 9c	60	30
	$315	92

EXHIBIT P. (J. A. O.)

NEW YORK, *October* 12, 1870.

Schooner Clara and owners bought of Hopkins & Nelson, ship-chandlers and grocers, 192 West street, near Duane street.

1870.

Aug. 1,	½-doz. sheets sand-paper, 18c., 2 gallons turpentine, *a* 75c.—$1.50	$1	68
	73 Russ. tarred rope, *a* 18c	13	14
	1 single 6-in. patent block, $1.50, 10-in. assorted nails, *a* 7c., 70c	2	20
	2 26-in. mast-hoops, fitted, *a* $1	2	00
	1 12-in. " "		50
	25-in. zinc, *a* 13c., $3.25, 18-in. Manila, *a* 22c., $3.96	7	21
	2 gallons kerosene, *a* 60c., $1.20; 1-2 brush, $1	2	20
	1-3 paint-brush	1	25— 30 18
15,	50 yds. parceling, *a* 20c	10	00
	25 yds. spun yarn, *a* 17c	4	25— 14 25
	30½ fms. 8½ Russ. tarred rope, ...584		
	27½ " 7 " " 402		
	20 " 5¾ " " 203		
	25 " 4½ " " 143		
143	12 fms. 5 Russ. tarred rope..... 81		
	14 " 5½ " " 117		
	25 " 4¼ " " 126		
	35 " 3 " " 78		
	40 " 2¼ " " 55		
	1 coil 15th rattlin..... 68		
	1857		
	a 16½c	$306	41
	106 coil 2 & 3 spun yarn, *a* 16½c	17	49
	174 " fine seizing stuff, *a* 20c	34	80
	159 " rounding humbowline, and marline, *a* 22½c	35	78
	16 coil tallow, *a* 15c., $2.40, ½-barrel tar, *a* $2.50	4	90
	1 side rig. leather, $4.50, 1 hank twine, 25c	4	75
	25 yds. parceling, *a* 20c., $5, 1 yd. reverse, *a* 50c	5	50

	½ gallon tar-oil		38—	410 01
Aug. 18,	25 yds. parceling, *a* 20c., $5, 16 rounding, *a* 22½c., $3.60			8 60
20,	15 gallons N. Y. copper paint, *a* 4½c.			67 50
22,	25 gallons dry yellow ochre, *a* 5c.			1 25
30,	1 coil 2-in. Manila, 130			
	1 " 1¾ " 78			
	208 *a* 21½c.	44 72		
	1 " 3¼ M. Plmth. 253			
	1 " 2¾ " 172			
	425 *a* 23c.	97 75		
	109 Russ. tarred rope, *a* 16½c.	17 99		
	5 gallons boiled oil, *a* $1.20, can, $1.25	7 25—	167 71	
Sept. 1,	1 coil 15th rattlin, 69 in. *a* 6½c.	11 39		
	1 lantin, $2.50; 115 Russ. tarred rope, *a* 16½c., $18.98	21 48		
	67 Manila rope, *a* 21½c.	14 40—	47 27	
144 3,	7 rounding, *a* 22½c., $1.58, 1 chr. yellow, *a* 50c.	2 08		
	½ Prussian blue, 50c.; 2 sash-tools, *a* 25c.	1 00—	3 08	
5,	75 white lead, *a* 14c., $10.50; 5 gall. boiled oil, *a* $1.20, $6	16 50		
	1 gallon Damar varnish & can	3 75		
	8 chm. green, *a* 37½c., $3, 1 dozen belaying pins, $2.50	5 50		
	12 galls. brt. varnish, *a* 50c., $6; 1 gallon turpentine, 75c.	6 75		
	5 hay rope, *a* 24c., $1.20, 25 zinc, *a* 12½c., $3.13	4 33		
	1 paper copper nails, 88c., 1¼ dozen galvanized staples, 78c.	1 66		
	19 Manila rope, *a* 21½c.	4 09		
	1½ yellow metal nails, *a* 37½c.	56—	43 14	
				$792 99
Cr.	By 15 gallons N. Y. copper paint, *a* 4½c.	67 50		
	1 5-gallon can	1 25—	68 75	
				$724 24

Received payment.

HOPKINS & NELSON.

EXHIBIT Q. (J. A. O.)

NEW YORK, *August* 30, 1870.

Schooner Clara to Yoe & Fearis, Dr., shipsmiths, 204 West street.

6 thimbles	$1 50
1 screw-shackle	1 25
1 pair match-hooks	1 00
1 pair match-hooks	1 25
1 spring key	12
	$5 12

Received payment.

YOE & FEARIS.

145 EXHIBIT R. (J. A. O.)

NEW YORK, *Sept.* 9, 1870.

Schooner Clara and owners to J. L. Evans, Dr., block and pump maker, No. 368 South street, between Montgomery & Gouverneur streets.

1 new single patent flying-jib halyard	$2 00
1 new single-bushed boom-tackle	1 20
2 new turned blocks 1½ mortise jib-sheets	4 00
2 " " " flying-jib	3 00
2 " " " jib-topsail	2 00
18 mast-hoops riveted, 28 in	16 38
20 " " fore-stays	7 14
4 dozen of hanks	3 50
Repairing 3 single-peak-halyard-blocks	5 00
Repairing fore-sheet block, new sheaves and pin	3 00
1 new boom tackle-block	1 20
1 new patent jib-halyard block	2 00
Rep. 3 peak-halyard blocks, 6 new patent sheaves	18 00
Fitting 8 lig. dogs in do	4 00
New pieces on bridges and cross-bolting block	5 00
1 new treble patent throat-halyards	10 50
Cartage of blocks	1 50
3 single blocks, downhauls	2 16
2 lig. hearts, jib-boom guys	2 00
4 " " "	4 00
1 single patent clew-line	1 50
1 lig. check-block gaft	2 50
1 single patent block outhauler, 1 bushed boom-lift	3 00
1 single, one double patent block jib-tackle	6 00
2 double patent blocks, reef-tackles	5 00
Cartage	1 50
1 lig. heart bob-stay, 1 double bull's-eye	2 50
Man's time cutting hearts	1 50
1 lig. heart, jib-boom guys, altering hoop	1 25
Fitting guard, screws, etc	1 00
4 capstan bars	3 00
1 lig. heart jib-stay	1 00
	127 33

J. L. EVANS,
By THORNBURN & WATERBURY.

146 EXHIBIT S. (J. A. O.)

NEW YORK, *August* 30, 1870.

Schooner Clara and owners to the Eckford Iron-Works, Dr., William H. Wells & Co., proprietors, ship machinists and iron founders, 106, 108, *and* 110 *Cannon street,* 286, 288, *and* 290 *Stanton street; office,* 110 *Cannon street.*

To 1 D. Gardner capstan, $58.
Received payment.

WILLIAM H. WELLS & CO.

[Duplicate, Oct. 11th, 1870.]

DECEMBER 16, 1871.

AUGUSTUS M. COX re-called.

Q. What was the condition of all the sails, with the exception of the mainsail?

A. These were all burnt to ashes with the exception of some little pieces. The main topsail was not injured, and is not mentioned in the bill.

Q. What was the condition of the mainsail previous to the fire?

A. The mainsail was good; there were no holes in it, and it was seaworthy for two years to come, unless some serious accident should happen it. All the sails were furled at the time of the fire.

Q. Was the mainsail exposed to the water and heat from the fire?

A. Yes, sir.

Q. Why did you have the mainsail repaired?

A. Because there were some holes burned in it. At the time I took this sail to be repaired I thought it would answer for a trip.

Q. After it was repaired it was returned to you; what was its condition; did or did you not use it?

A. We did use it. After we had been at sea two days, the mainsail began to break, and it kept breaking in different places. On our way back we had to take in the mainsail twice; it was in good weather, but some sea. We had to take it in to mend it. After we had
147 mended it, we bent it again, but it still continued to break until we arrived. After we arrived I condemned the sail, and sent it to a sail-loft.

Q. (Exhibit I shown witness.) State whether all the items mentioned in that bill were made necessary by reason of the fire.

A. There is nothing charged in the bill except it was made necessary by the fire, unless it may be a center-board boat, which I don't find.

Q. (Exhibit Q shown witness.) State whether the items in this bill were made necessary by the fire.

A. Yes.

Cross-examined:

The mainmast was cracked in three places; that happened by the mast falling back when the stays gave way, the stays from the bowsprit—the spring stay was from the mainmast to the foremast. There was no other injury to the mainmast, except that it was scorched in some places, but not sufficient to condemn it. The boom was not injured; the mainsail was furled to the mainmast boom. The fire reached to her mainmast. The mainsail was not exposed to the blaze of the fire. These holes were burned by cinders and pieces of canvas falling from the mast-head; those holes are all repaired. I had not had this sail examined previous to the fire as to its rottenness; it was only my own judgment. I examined it myself before the fire, to see whether it was rotten. I disremember how long before the fire I examined it. I had examined it often before the fire, to see whether it was rotten; how many times I can't say. I could not say whether water was thrown on the sail or not, but I think there was; water was thrown all over the vessel. When the foresail was burning, there was a little flame aft the mainmast when it first took. The sail was exposed to the heat from the burning vessel, and the ferry-boat was under her bow. I and other men were on the deck aft of the cabin while the vessel was burning. The forward part of the sail was more exposed to the fire than we were; by the forward part I mean the part nearest the mast. The measurement tonnage of the vessel is two hundred and ninety-

148 five and a fraction; the carriage tonnage is three hundred and fifty to three hundred and sixty tons. I have carried three hundred and seventy tons; the average is three hundred and sixty-five. She most always goes light from New York. I think that the repaired mainsail and the other sails were bent on the tenth of September, 1870, the day she was towed from the dock. She was then in condition to sail, and did sail the next day to Georgetown, D. C. She returned to New York in about two weeks—I cannot tell exactly without referring to my books; the new mainsail was bent on our return from Georgetown. We went out light the first time and also the second time. I discovered that the mainsail was rotten after we had been at sea about two days.

Redirect:

The rates of demurrage are governed by the bill of lading, according to carrying capacity. The first Sunday and legal holidays are excepted.

Recross:

The running expenses of twelve dollars a day, which I have mentioned, does not include wharfage.

AUGUSTUS M. COX.

Subscribed and sworn to before me this 16th day of December, 1871.

JOHN A. OSBORN,
United States Commissioner.

Adjourned to Saturday, December 23d, at two o'clock p. m.
Evidence all in.

149 *Commissioner's report.*

United States district court, southern district of New York.

AUGUSTUS M. COX AND OTHERS, LIBELLANTS,
against
THE STEAMER CLARA CLARITA, HER ENGINE, tackle, etc., respondent.

In pursuance of a decretal order made in the above entitled cause, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-one, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for damages by them sustained by reason of the collision and fire in the pleadings mentioned, and to report thereon to this court with all convenient speed—

I, John A. Osborn, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the respective parties and the witnesses, and have taken and examined the testimony offered in support of the libellant's claim for damages aforesaid, and do find that there is due them as follows, to wit:

Ship-carpenter's bill, Exhibit A, including dockage and cleaning vessel's bottom	$1,408 67	
Interest thereon from August 27, 1870, 6 per cent	115 51	
		$1,524 18
Towage bill, Exhibit B	10 00	
Interest thereon, August 8, 1870, to date	85	
		10 85

	Rigger's bill, Exhibit C	284 28	
150	Interest from September 8, 1870, to date.	$22 74	
			$307 02
	Towage bill, Exhibit D	10 00	
	Interest from August 10, 1870, to date	84	
			10 84
	Towage bill, Exhibit E	10 00	
	Interest from September 9, 1870, to date	80	
			10 80
	Merchants' Police bill, Exhibit F	20 00	
	Interest from September 8, 1870, to date	1 60	
			21 60
	Bill for scraping and painting, Exhibit G	56 00	
	Interest from August 27, 1870	4 59	
			60 59
	Bill of Van Every & Co., Exhibit H	1 76	
	Interest from September 3, 1870	13	
			1 89
	Bill of Knight, blacksmith, Exhibit I	82 33	
	Interest from September 9, 1870	6 58	
			88 91
	Spar-maker's bill, Exhibit K	930 08	
	Interest from August 11, 1870	78 74	
			1,008 82
	Wharfage bill, Exhibits L and M. Exhibit L	4 48	
	Interest from August 10, 1870	40	
			4 88
	Exhibit M	24 75	
	Interest from September 9, 1870	1 98	
			26 73
	Sailmaker's bill for foresail, jib, flying-jib, jib-top-sail, and fore-gaft topsail. Exhibit N	685 68	
	Interest from August 20, 1870	57 12	
			742 80
	Sail-maker's bill for new mainsail, less $60.30, credit for old sail. Exhibit O	315 92	
	Interest from September 30, 1870	24 16	
			339 08
	Ship-chandler's bill, Exhibit P	723 04	
	Interest from October 12, 1870	53 87	
			776 91
	Ship-smith's bill, Exhibit Q	5 12	
	Interest from August 30, 1870	42	
			5 54
151	Block and pump-maker's bill, Exhibit R	$127 33	
	Interest from September 9, 1870	10 18	
			$137 51
	Bill for new capstan, Exhibit S	58 00	
	Interest from August 30, 1870	4 72	
			62 72
	Captain's services, 40 days, at $2.50 per day	100 00	
	Interest from September 9, 1870	8 00	
			108 00
	Mate's wages, 40 days, at $40 per month	53 33	
	Interest from September 9, 1870	4 26	
			57 59

Cook's wages, three weeks, at $35 per month ...	24 50	
Interest from September 9, 1870	1 96	
		26 46
Amount of damage, exclusive of demurrage		$5,333 72
Demurrage, 40 days, at $16.40 per day		656 00
The total amount of damage, including demurrage, hereby reported, is the sum of five thousand nine hundred and eighty-nine dollars and seventy-two cents		$5,989 72

All which is respectfully submitted.

JOHN A. OSBORN,
U. S. Commissioner Southern District of New York.

January 9, 1872.

OWEN, NASH & GRAY, *Proctors for Libellants.*

152 United States district court, southern district of New York.

THE STEAM-TUG CLARA CLARITA, HER ENGINE, etc., *ads.* AUGUSTUS M. COX ET AL.

The claimant of the Clara Clarita hereby excepts to the report of the commissioner, to whom it was referred to assess the damages, bearing date January 9th, 1872.

FIRST EXCEPTION.—By reason of his allowance of the charge of $30 in the bill of G. H. Ferris, ship-carpenter, Exhibit A, for hauling out the schooner Clara on the ways or dock, and cleaning her bottom, not shown by the testimony to have been caused by the casualty to said schooner.

See testimony of Gilbert Ferris for 2, 3, 4, and Ex. A.

SECOND EXCEPTION.—For his allowance of the amount bills Exhibit N and O; the cost of the new sails after deducting on Exhibit O the old mainsail credited on that bill, instead of allowing only the value of the old sails, shown by the proofs and admission of the captain not have been worth more than half the cost of the new.

Bills Ex. N and O, and Cox, fo. 15.

THIRD EXCEPTION.—For his allowance of the cost of the new mainsail, deducting the old credited on the bill therefor, Exhibit O, $315.92 and interest, instead of allowing only the repairs on the old mainsail.

FOURTH EXCEPTION.—For his allowance of interest on the full amount of bills for sails of which lib'l'ts had the use.

153 FIFTH EXCEPTION.—For allowance for the master's services so far as in excess of his wages.

Dated New York, January 12, 1872.

C. VAN SANTVOORD,
Proctor for Claimants.

(Indorsed:) 23–418. United States district court, southern district of New York. The Steam-Tug Clara Clarita, her engine, etc., ads., Augustus M. Cox et al. Exceptions to commissioner's report. C. Van Santvoord, proctor for claimant. Filed January 12, 1872.

First exception allowed; the others disallowed. Referred back for re-adjustment. January 24, 1872.

S. B.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Wednesday, the 24th day of January, in the year of our Lord one thousand eight hundred and seventy-two. Present: the honorable Samuel Blatchford, district judge.

AUGUSTUS M. COX ET ALS.
vs.
THE STEAM-TUG CLARA CLARITA.

This case having been heard on exceptions taken by the claimants to the commissioner's report herein, and argued, and submitted on briefs and points by the advocates for the respective parties, and due deliberation being had in the premises:

It is now ordered, adjudged, and decreed by the court that the first exception be, and the same is hereby, allowed, and all the other
154 exceptions disallowed; and it is further ordered that the item of $30 for hauling the vessel out and cleaning her bottom, together with the interest on the same, amounting to $2.64, being deducted from said commissioner's report, leaving the balance at $5,957.08, said commissioner's report be, and the same is hereby, confirmed for that amount as of its date.

SAMUEL BLATCHFORD.

(Indorsed:) Vol. 23, No. 418. United States district court for the southern district of New York. Augustus M. Cox et als. vs. The Steam-Tug Clara Clarita, etc. Order. Owen, Nash & Gray, proctors for libellants. Filed January 29, 1872.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the 2d day of February, 1872. Present: the honorable Samuel Blatchford, district judge.

AUGUSTUS M. COX ET ALS.
vs.
THE STEAM-TUG CLARA CLARITA, HER ENGINE, etc.

This cause having been heard on exceptions taken by the claimants to the commissioner's report, dated January 12th, 1872, the said report having been confirmed, after deducting $32.64, leaving due a balance of $5,957.08, of the date of the report:

Now, on motion of Owen, Nash & Gray, libellants' proctors, it is ordered, adjudged, and decreed that the libellants recover in this action against the steam-tug Clara Clarita, her engine, etc., the sum of five thousand nine hundred and fifty-seven dollars and eight cents,
155 the amount so reported due to them as aforesaid, after making the deduction above mentioned, with interest thereon from the 9th day of January, 1872, the date of the said report, to the date of this decree, being the sum of twenty-eight dollars, together with their costs, taxed at one hundred and forty-three $\frac{51}{100}$ dollars, making together for principal, interest, and costs, the sum of sixty-one hundred and twenty-eight $\frac{65}{100}$ dollars, and that said steam-tug, her engine, etc., be condemned therefor.

And it is further ordered, adjudged, and decreed that out of the pro-

ceeds of the stipulation for value of the steam-tug Clara Clarita, filed herein, which shall be paid into the registry of this court, the clerk do pay to the libellants or their protectors the last-aforesaid sum, with interest from the date of this decree to the time of such payment, and that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the clerk pay over such proceeds in satisfaction of this decree.

SAMUEL BLATCHFORD.

(Indorsed:) United States district court, 23–418. Augustus M. Cox et als. vs. The Steam-Tug Clara Clarita, her engines, etc. Final decree. Owen, Nash & Gray, proctors for libellants. Decree approved as to form. C. Van Santvoord, proctor for claimant. Filed February 2d, 1872.

156 United States district court, southern district of New York.

THE STEAM-TUG CLARA CLARITA, HER ENGINE, tackle, apparel, etc., the New York Harbor Protection Company, claimant,
ads.
AUGUSTUS M. COX ET ALS., LIBELLANTS.

Take notice that the New York Harbor Protection Company, claimant, hereby appeals to the next circuit court of the United States for the southern district of New York, in the second circuit, from the whole and every part of the decree of the district court for said southern district, made and entered in this cause the 2d day of February, 1872, in favor of the libellants.

New York, Feb. 6, 1872.

Yours, etc.,

C. VAN SANTVOORD,
Proctor for Claimant.

To GEORGE F. BETTS, Esq., *Clerk, etc.*
OWEN, NASH, & GRAY, *Proctors for Libellants.*

(Indorsed:) 23–418. United States district court, southern district of New York. The Steam-Tug Clara Clarita, her engine, etc., the New York Harbor Protection Company, claimant, appellant, ads. Augustus M. Cox et als., libellant and appellee. Notice of appeal. C. Van Santvoord, proctor for claimant and appellant. Service of a notice of appeal, of which within is a copy, is hereby admitted. New York, February 5th, 1872. Owen, Nash & Gray, proctors for libellants. Filed February 9th, 1872.

157 Circuit court of the United States for the southern district of New York.

THE STEAM-TUG CLARA CLARITA, HER ENGINES, tackle, apparel, etc.—the New York Harbor Protection Company, claimant and appellant,
ads.
AUGUSTUS M. COX ET ALS., LIBELLANTS AND appellees.

To the honorable the circuit court of the United States for the southern district of New York:

The petition and appeal of the above-named appellant showeth: That on or about the ninth day of September, 1870, the above-named libellants

filed their libel in the district court of the United States for the southern district of New York against the steam-tug Clara Clarita, her engine, tackle, apparel, etc., and against all persons intervening for their interests therein, in a cause of collision, civil and maritime, in which libel it is alleged, and praying, as therein contained, and to which this petitioner refers for its contents, that thereafter, on or about the fifth day of November, 1870, the said claimants, having executed the necessary stipulations for cost and value, did file their claim and answer, alleging, as therein contained, and insisting that said steam-tug Clara Clarita was not liable for the damages claimed by said libellants, as will more fully appear on reference to said answer, and to which, for the contents thereof, this appellant asks leave to refer. That thereafter the said cause came on to be tried and to be heard before the honorable Samuel Blatchford, judge of said district court, on the twenty-fourth,
158 twenty-seventh, and thirtieth days of October, 1871, upon the allegations and proofs adduced by the respective parties, and the said judge having advised thereon, on or about the fifteenth day of November, 1871, made a decretal order or sentence, bearing that date, that the libellants recover in said action against the steam-tug Clara Clarita, her tackle, etc., the damages by them sustained by reason of the collision, in the pleadings mentioned, with their costs to be taxed, and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report thereon, to that court, as by reference to such decretal order will appear; that after proceeding with such reference before John A. Osborn, esq., one of said commissioners, he made his report to said court, bearing date the ninth day of January, 1872, to which report exceptions were taken by this appellant; and thereafter, after argument on said exceptions, a final decree was made, bearing date the second day of February, 1872, overruling certain of said exceptions, and for the recovery by said libellants against steam-tug Clara Clarita, her engine, tackle, apparel, etc., of the sum of five thousand nine hundred and eighty-five dollars and eight cents, with costs to be taxed, and which were thereafter taxed at the sum of one hundred and forty-three dollars and fifty-one cents, in all amounting to the sum of six thousand one hundred and twenty-eight dollars and fifty-nine cents, as will more fully appear by reference to said decree, to which reference is had for its contents; and this appellant is advised and insists that said decree is erroneous, inasmuch as the said libel should have been dismissed with costs, and for that, if said libellants were entitled to a decree for any damage, damages have been which should not have been allowed.

And the appellant, for these and other reasons, appeals from the whole of the said decree, and every part thereof, to the next circuit court, to be held in the said district, (and on the said appeal it intends to seek a new decision on the facts, on the pleadings and proofs, in the district court, and other proofs be produced in the circuit court, and
159 to pray different relief,) and it prays that the said decree, and every part thereof, may be reversed with costs, or such other decree thereupon made as to the said circuit court shall seem just, and the said appellees be condemned to pay to these appellants its costs and damages in the premises.

And these appellants will ever pray, etc.

Dated New York, February 8th, 1872.

C. VAN SANTVOORD,
Proctor and Advocate for Appellant.

We admit due service of a copy of the foregoing petition and appeal, this ninth day of February, 1872.

OWEN, NASH & GRAY,
Proctors for Libellants.

(Indorsed:) Vol. 23. No. 418. United States circuit court for the southern district of New York. The steam-tug Clara Clarita, her engine, etc. The New York Harbor Protection Company, claimants and appellants, ads. Augustus M. Cox et als., libellants and appellees. Petition and appeal. C. Van Santvoord, proctor for appellants. Filed February 9th, 1872.

Know all men by these presents, that we, Henry A. Burr, of the city of New York, and George M. Woodward, of the city of Brooklyn, are held and firmly bound unto Augustus M. Cox, Lemuel H. Hopkins, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn, in the sum of twelve thousand five hundred ($12,500) dollars, to be paid to the said Augustus M. Cox, Lemuel H. Hopkins, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn, their executors, administrators, or assigns, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the ninth day of February, in the year of our Lord one thousand eight hundred and seventy-two.

160 Whereas the New York Harbor Protection Company, claimant of the steam-tug Clara Clarita, her engine, etc., as appellant, has appealed to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for the said southern district, bearing date the second day of February, 1872, in a suit in which Augustus M. Cox and other obligees above named are libellants, against the steam-tug Clara Clarita, her engine, tackle, etc.:

Now, therefore, the condition of this obligation is such that if the above-named appellant, the New York Harbor Protection Company, shall prosecute said appeal with effect and pay all damages and costs which shall be awarded against it as such appellant therein, if it shall fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

H. A. BURR. [SEAL.]
G. M. WOODWARD. [SEAL.]

Sealed and delivered and taken and acknowledged this 9th day of February, 1872, before me.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry A. Burr and George M. Woodward, being duly sworn, depose and say, each for himself, that he is worth the sum of twenty-five thousand dollars over and above all his just debts and liabilities; and the said Burr further says that he resides at No. 22 St. Mark's Place, in the

city of New York, in the southern district of New York; and the said Woodward that he resides at No. 71 Park Place, in the city of Brooklyn, in the eastern district of New York.

H. A. BURR.
G. M. WOODWARD.

Sworn to this 9th day of February, A. D. 1872, before me.
JOHN A. SHIELDS,
U. S. Commissioner S. D. of New York.

161 This bond approved as to form and amount and sufficiency of surety.
Dated New York, February 9th, 1872.
SAMUEL BLATCHFORD,
District Judge.

(Indorsed:) 23–418. United States circuit court for the southern district of New York, in the second circuit. The steam-tug Clara Clarita, her engine, etc.—the New York Harbor Protection Company, claimant and appellant, ads. Augustus M. Cox et al., libellants. Bond for damages and costs on appeal. C. Van Santvoord, proctor for appellant. Filed this ninth day of February, 1872.

(Here follows diagram marked page 163.)

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164 Circuit court of the United States for the southern district of New York.

THE NEW YORK HARBOR PROTECTION COMpany, lib'l't, app'l't,
agst.
THE SCHOONER CLARA, HER TACKLE, &C., Augustus M. Cox et al., cl'ts.

THE STEAM-TUG CLARA CLARITA, HER ENgine, &c.,
adsm.
AUGUSTUS M. COX ET AL., LIB'L'T, APPELLEES.

Please to take notice that pursuant to the 49th rule of the Rules of Practice for the courts of the United States in admiralty and maritime jurisdiction, on the instance side of the court, in pursuance of the act of Congress in that behalf, William H. Foote, Thomas Marshall, William Knapp, William W. Vanderbilt, William Pease, Charles Hazzard, & William Minor will be examined on the part of the lib'l'ts in 1st above suit, & cl'ts in 2d suit, in the above-entitled cause, before me, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office, United States court buildings, 41 Chambers street, in the city of New York, on the 21st day of December, inst., at 10 o'clock in the forenoon of that

day, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated New York, the 19th day of December, A. D. 1872.

Yours, &c.,

R. E. STILWELL,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To OWEN, NASH & GRAY, Esqs.,
Proctors for Cl'ts of Sch'r Clara, &c.

165 (Endorsed:) United States circuit court. The N. Y. Harbor Protection Company agst. The schooner Clara, &c. Augustus M. Cox et al. agst. The steam-tug Clara Clarita, &c. Notice for ex'm'n of witnesses before R. E. Stilwell, U. S. comm'r, on 21st Dec., 1872. C. Van Sanvoord, proctor for N. Y. Harbor Protection Company.

Service of a notice, of which within is a copy, is hereby admitted.

New York, Dec. 19th, 1872.

OWEN, NASH & GRAY,
p'r Clara.

166 CIRCUIT COURT OF THE U. STATES,
For the southern district of New York:

THE NEW YORK HARBOR PROTECTION CO., libellant & appellant,
vs.
THE SCHOONER CLARA, HER TACKLE, &C., Augustus W. Cox et al., claimants & appellees.

THE STEAM-TUG CLARA CLARITA, HER ENGINE, &C.,
adsm.
AUGUSTUS M. COX ET AL., LIB'L'TS, APPELLEES.

Testimony taken on the part of the libellant in the first suit, and on the part of the claimant in the second suit, pursuant to the 49th rule of the Rules of Practice for the courts of the United States, in admiralty and maritime jurisdiction promulgated by the Supreme Court of the United States for the taking of depositions to be read on appeals in admiralty.

Saturday, December 21st, 1872.

Present: C. Van Santvoord, esq., counsel for appellant; E. H. Owen, esq., counsel for respondents.

167 WILLIAM W. VANDERBILT, called and sworn as a witness, deposes and says:

Q. 1. Have you had any, and if so, what, experience in towing vessels in and about the harbor of New York?

A. I was attached to a tow-boat some years ago in towing vessels around the harbor of New York at that time. Since then, I have been general superintendent of the Pacific Mail Co., and have had a great many vessels towed.

Q. 2. For how long a period were you attached to a tug engaged in towing?

A. About a year and a half in the neighborhood of 1834 and 1835, and since that have been superintendent of the Pacific mail, and have had all their vessels towed around the city, to and from the dry dock, and around the harbor, and have had vessels towed at sea.

Q. 3. In your experience in towing, or in having vessels towed, did you, or did you not, ever know of a chain being used for hawser for towing?

(Objected to.)

168 A. I never did.

Q. 4. What objections are there, if any, to the use of a chain for towing?

(Obj. to.)

A. The inconvenience of the getting the chains, being so heavy to handle, liability to get foul of the propeller of the tug in case of parting or having a slack, liability to part by having a sudden strain on it. I don't think at present of anything else.

Q. 5. In the event of a sudden sinking of the boat towed, would it endanger the safety of the tug more than a rope?

(Obj. to as leading and as incompetent.)

A. It would, by being more difficult to cast off, and if the vessel sunk the liability to pull the vessel down with her. The chain could be cut in time, but not in a sudden emergency.

Q. 6. Why would the chain be more liable to break than a hempen or Manilla rope?

(Obj. to.)

A. It has no elasticity, and couldn't spring any. It could not be paid out around the bitts.

169 Q. 7. Is a chain more liable to kink and thereby to break?

(Obj'd to as leading and as incompetent.)

A. Yes, sir.

Q. 8. In practice did you ever know or hear of any kind of hawser being used for towing, except a Manilla or hemp hawser?

A. I never did.

Cross-examined by E. H. Owen, esqr.:

X. 9. What are used for tiller ropes, by which to move the tiller upon tug-boats and other steam-vessels?

A. Usually a rope is used around the barrel of the wheels, rods lengthwise of the vessel, the wheel being generally placed forward and chains are generally used around the tiller or rudder head.

X. 10. Why are the rods and chains so used instead of ropes all the way?

A. Because the United States inspection-laws demand it.

170 X. 11. Is it not because such rods and chains are less liable to burn and break in case of fire?

A. Rods and chains would be less liable to burn off, but the chains would be more liable to break, because there is less elasticity, and more liable to break in the sudden heaving of the wheel in a sea. They would not be liable to break in case of fire unless they became red hot.

X. 12. What class of vessels were those towed by you? How were they laden?

A. When I was in the business of towing they were towing packet-ships in and out to sea, and towing vessels around the harbor, and they were laden with merchandise. While I was superintendent of the Pa-

cific Mail Company they were steamships of 3,000 tons burden and upwards. Other than I have already stated, I have had no practical experience in towing.

W. W. VANDERBILT.

Subscribed and sworn to before me this 21 December, 1872.

R E. STILWELL,
U. S. Commissioner.

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172 WILLIAM H. FOOTE, called by Mr. Van Santvoord, deposes and says:

Q. 1. Have you had any, and, if so, what, experience about towing vessels about the harbor of New York, and for what time?

A. My experience is about 15 or 16 years, in towing all class' of vessels about the harbor of New York and at sea.

Q. 2. Do you know from your experience in towing what kind of hawsers have been used?

A. Yes, sir.

Q. 3. Go on and state what are the kind of hawsers in use for towing. (Obj. to.)

A. Hemp and manilla.

Q. 4. Did you ever know or ever hear of a chain being used as a hawser for towing, under any circumstances? (Obj. to.)

A. No, sir.

Q. 5. Are there to your knowledge objections to the use of a
173 chain-hawser? and, if so, state what they are.

A. They are impossible to handle. If you wanted to get clear of a vessel you could not cast it off. It will not stand a sudden strain. If you stop your boat it would be like to get foul of the propeller-wheel and get foul of the towing-boat.

Q. 6. In case of the boat towed being liable to a sudden sinking, could a chain be used as a hawser for towing with safety to the boat towing, and, if not, why not?

A. It would endanger the tug, I should think. It would take more time to cast it off, and it could not be cut as suddenly as a hawser.

Q. 7. Would there be a further danger to the towing-vessel on a sudden parting or fouling the propeller or screw?

A. Yes, sir.

Q. 8. Did you ever know or ever hear of a chain being used as a hawser for towing by any tug-boat in or about the harbor of New York?

174 A. No, sir.

Cross-examined by Mr. Owen:

X. 9. In what way have you been engaged in towing, and what class of vessels have you towed, and how were they loaded?

A. I have towed from the very largest to the very lowest, laden with merchandise.

X. 10. Have you ever had any, and, if so, what, experience in towing boats or other vessels when in flames?

A. I towed the Metis while on fire off in the river, and the propeller Babcock put out the fire. We towed her from the slip out into the river. I have never towed any other vessels while on fire, but have towed them out of a fire.

X. 11. When was it that you towed the Metis, and how far out into the stream did you tow her before she was anchored?

A. I towed her two-thirds of the way across the river, and anchored her on the Jersey shore. This was some 6 or 7 years ago.

175 X. 12. Were any of the officers or crew of that boat, or any persons, on her at the time you so towed her, and did they have anything to do with steering her?

A. I saw men on board of her; I did not notice whether they governed her by the wheel or not. The vessel was on fire on the outside, along the joiner-work. There was but very little wind at the time. After we got her in tow it did not take over 15 or 20 minutes to tow her.

X. 13. If, as you state, you could not safely tow a boat or other vessel by the use of a chain-cable, and the vessel was in that condition that she could not be towed by a hawser with safety, you would not undertake to tow her at all, would you?

A. No, sir.

Direct resumed:

Q. 14. Suppose the condition was such that there was risk in towing her out with a hawser, but she was in such a situation that she
176 would set fire to the buildings on the dock, or to other vessels, would you not undertake to tow her?

A. I would undertake to tow her if I could get the hawser attached to her, if they would undertake to do it.

Cross resumed:

X. 15. In such case would you contract or undertake to tow her any particular distance, or merely to haul her out in the stream, where she might be anchored or cleared from the vessel or dock?

(Objected to as irrelevant.)

A. Well, I should try to tow her as far as the hawser would permit. I would not agree to haul her to any particular place if she was all in flames, because my hawser might burn up.

WM. H. FOOTE.

Subscribed and sworn to before me this 21st day of December, 1872.

R. E. STILWELL,
U. S. Comm'r.

177
178 THOMAS F. MARSHALL, called by Mr. Van Santvoord and sworn, deposes and says:

Q. 1. Have you had any, and, if so, what, experience in towing vessels in and about the harbor of New York; and if so, about what time?

A. I have done so since 1847, as master and part owner.

Q. 2. Have you had anything to do with saving, wrecking, and saving vessels?

A. Yes, sir; I had charge of one of the submarine wrecking-steamers about three years ago.

Q. 3. From your experience in towing and in this other business of saving vessels, do you know what sort of hawsers were and have been used for towing? and, if so, state.

(Obj. to.)

A. Manilla hawsers. Never used hemp on our own boats.

Q. 4. Did you ever know, or ever hear, of a chain being used as a hawser for towing, under any circumstances?

179 A. I never did.

Cross-examined by Mr. Owen:

X. 5. Have you had any experience in towing boats or vessels when on fire?

A. No, sir.

THOS. F. MARSHALL.

Subscribed and sworn to before me this 21st December, 1872.

R. E. STILWELL,
U. S. Comm'r.

180 WILLIAM H. KNAPP, called and sworn as a witness by Mr. Van Santvoord:

Q. 1. Have you had any, and, if so, what, experience in towing vessels in and about the harbor of New York, or in saving vessels; and, if so, what? State fully.

A. I have been engaged in towing vessels all my life. I pulled 4 vessels out of the large fire in West 10th street some 3 or 4 years ago. I pulled the bark Louisa out of the fire in Brooklyn.

Q. 2. From your experience in towing and in this other business of saving vessels, do you know what sort of hawsers were and have been used for towing by steam-tugs? and, if so, state.

(Obj. to.)

A. Manilla.

Q. 3. Did you ever know, or ever hear, of a chain being used as a hawser, under any circumstances?

A. No, sir; I never did.

Q. 4. Will you state whether it would or would not be safe for
181 the towing-vessel to use a chain in towing a burning vessel to prevent a conflagration, or otherwise?

A. If you could get a chain to it it would be safe, I think. I don't think you could get the chain to it.

Q. 5. In case of a sudden parting of a chain, if used, would or would not it be liable to foul the propeller of the towing-vessel?

A. Yes, sir; it would not be handy. It could not be kept clear.

Q. 6. In the event of a sudden sinking of the vessel towed, would or would not the towing-vessel be liable to be pulled down if a chain were used?

A. I should think it would.

Cross-examined by Mr. Owen:

X. 7. Then if you could not safely to your tow-boat tow a vessel with a chain, you wouldn't undertake to tow her at all, would you?

A. No, sir.

182 X. 8. Were the vessels you hauled out on the occasion of the fire in West 10th street themselves on fire?

A. No.

X. 9. Were those you hauled out from the dock in Brooklyn themselves on fire?

A. Yes, sir; and the vessel's name was the bark Louise. I hauled her out to anchorage in the middle of the stream; about a half a mile, I suppose. There were persons on board of her at the time. They used her wheel in steering her.

Direct resumed:

Q. 10. Suppose the condition were such that the progress of the flames would set fire to the buildings on dock, and perhaps to burn up the town, would you not then attempt to tow her out?

(Obj. to.)

A. Yes, sir; the buildings were all on fire, and the dock also, at the time I pulled her out.

Q. 11. You have not answered the question.

(Obj. to.)

183 A. I would if I could get a line to her.

WILLIAM H. KNAPP.

Subscribed and sworn to before me this 21st December, 1872.

R. E. STILWELL,
U. S. Comm'r.

184 WILLIAM MINNER called and sworn on part of Mr. Van Santvoord:

Q. 1. Have you had any, and, if so, what, experience in towing vessels in and about the harbor of New York, or in saving vessels that were in distress? and if so, state what.

A. I have had an experience of 16 or 17 years in towing vessels to and from sea and about the harbor of New York, of all classes, from the biggest to the smallest. I have helped pull vessels off the Jersey shore to save them.

Q. 2. From your experience in towing and in saving vessels do you know what sort of hawsers were and have been used? and if so, state.

(Obj. to.)

A. Manilla, hemp, and what is called Ky-yy, a kind of rope.

Q. 3. Did you ever know or hear of a chain being used as a hawser for towing under any circumstances?

A. No, sir.

185 Cross-examined by Mr. Owen:

X 4. Have you had any experience in towing boats or vessels when on fire?

A. No, sir.

WILLIAM his + mark. MINNER.

Subscribed and sworn to before me this 21st December, 1872.

R. E. STILWELL,
U. S. Comm'r.

186 WILLIAM PEASE, called by Mr. Van Santvoord, and sworn, deposes and says:

Q. 1. Have you had any, and, if so, what, experience in and about the harbor of New York in towing vessels, or in saving vessels that were in distress; and if so, what?

A. I have been in the towing business around New York since 1828. I have never saved but one vessel; she was outside of Sandy Hook, and capsized.

Q. 2. From your experience in towing do you know what sort of hawsers were, and have been, used? and if so, state.

(Obj. to.)

A. We generally use a Manilla hawser, and sometimes a tarred hawser, or what is called hemp, and sometimes we use a Ky-yy, a kind of rope made out of grass.

Q. 3. Did you ever know or hear of a chain being used as a hawser for towing, under any circumstances?

(Obj. to.)

A. No, sir; I never did.

187 Q. 4. State whether there are any, and, if any, what, objections to the use of a chain hawser.

A. Well, in the first place, we would not have crew enough on board to make it fast. In the next place, if it got jammed we could not cut it loose, and how many times when we are towing a hawser gets jammed, and if we hadn't an axe to cut it loose it would have upset the tug. A chain-hawser cannot be used with safety to a tug.

Cross-examined by Mr. Owen:

X. 5. Then the only difficulty in using a chain-hawser in towing vessels is, that it cannot be done with safety to the tug?

A. Yes; it could not be done with safety to the tug. There are other reasons, which I have already stated.

WILLIAM PEASE.

Subscribed and sworn to before me this 21st December, 1872.

R. E. STILWELL,
U. S. Comm'r.

188 I, R. E. Stilwell, a U. S. commissioner, duly appointed, &c., do certify that pursuant to the 49th Rule of the Supreme Court of the United States, in admiralty, I caused the witnesses whose names are subscribed to the annexed depositions to appear before me on the 21st of December, 1872, and after being duly sworn by me, they gave the depositions hereto annexed, which were taken down by me in my own proper handwriting.

I further certify that Messrs. Van Santvoord and Owen, counsel for respective parties, appeared on the taking of the same.

R. E. STILWELL,
U. S. Comm'r for the Southern District of New York.

(Endorsed:) Circuit court U. States southern district of New York. The New York Harbor Protection Company, libellant and appellant, vs. The schooner Clara, her tackle, &c., Augustus M. Cox et al., claimants. The steam-tug Clara Clarita, her engine, &c., ads. Augustus M. Cox et al., libellants and appellees. Filed December 23, 1872.

189

190 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Monday, the 16th day of June, in the year of our Lord one thousand eight hundred and seventy-three.

Present: The honorable Lewis B. Woodruff, circuit judge.

THE NEW YORK HARBOR PROTECTION COMPANY, libellants & appellants,
vs.
THE SCHOONER CLARA, &C., A. M. COX ET AL., claimants & appellees.

STEAM-TUG CLARA CLARITA, &C., & THE NEW York Harbor Protection Co.,
ads.
AUGUSTUS M. COX ET AL.

The above-entitled causes coming on for hearing on appeal from the district court of the United States:

Mr. C. Van Santvoord is heard in behalf of the libellants and appellants.

191

192 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Tuesday, the 17th day of June, in the year of our Lord one thousand eight hundred and seventy-three.

Present: The honorable Lewis B. Woodruff, circuit judge.

THE NEW YORK HARBOR PROTECTION COMpany, libellant & appellants,
vs.
THE SCHOONER CLARA, &C., A. M. COX ET AL., cl'm'ts & appellees.

THE STEAM-TUG CLARA CLARITA, &C.—THE N. Y. Harbor Protection Co.,
ads.
AUGUSTUS M. COX ET AL.

The above-entitled causes being still on hearing:

Mr. C. Van Santvoord concludes his argument in behalf of the libellants & appellants.

Mr. E. H. Owen is heard in behalf of the respondent and appellees.

Cur. adv. vult.

193

194 Circuit court of the United States for the southern district of New York. In admiralty.

C. Van Santvoord, for appellants; E. H. Owen, for appellees.

THE NEW YORK HARBOR PROTECTION COMpany, appellants,
vs.
THE SCHOONER CLARA.

AUGUSTUS M. COX ET AL.
vs.
THE STEAM-TUG CLARA CLARITA, &C., APPELlant.

WOODRUFF, J.

I concur in the conclusion of the district judge in these cases, and for substantially the same reasons assigned in his opinion.

Assuming that the owners of the ferry-boat exercised a lawful right to remove their boat from the slip in which it lay, (and no doubt they had such right, notwithstanding she was on fire, and whether her remaining in the slip did or did not involve danger to other property,) whoever attempted her removal was bound to use precautions to
195 prevent her from being carried by wind and tide against other vessels lying at anchor in the harbor, corresponding to the danger and consequences of such a result. The danger was extraordinary, and more than usual precautions to secure and retain control of the burning mass were therefore required by ordinary prudence. Reasonable care in such circumstances is not to be determined by the ordinary usuages of tugs engaged in towing when no such circumstances of peril to others

existed. Proofs, therefore, of the customary practice of tugs engaged in towing vessels in and about the harbor, to use hempen hawsers only, does not furnish a satisfactory test of the caution and care due from a tug-boat professedly engaged in the business of rescuing vessels from conditions of extraordinary peril, including fire on board.

The testimony taken in this court does not, I think, exoner-
196 ate the tug. It is so obvious as hardly to require proof that a chain attached to the burning boat would have prevented loss of control over her. The use of such a chain is not proved impracticable, and it is equally obvious, I think, that it was not only practicable but easy.

No heavy anchor-chain extending from one boat to the other, which the hands of the boat could not manage, was required. All that was essential was that the attachment to the burning boat extending a few feet therefrom should be incombustible; for the rest a rope or hempen hawser was sufficient. The parties expected the flames to spread through and over the burning boat. It was this expectation which induced the attempt to remove her from the slip. In view of this it was negligence to remove her under no other control than a rope which presumptively would be burned off so soon as the expected spread of the fire should reach it. In this respect it was not like a shifting
197 of the location of the boat with a view to the extinguishment of the fire before it should thus extend. Before any hawser was attached for the purpose of drawing her from the slip, chains were to be found both on the ferry-boat and on the tug, and it is not to be doubted that a chain of suitable length to form a connection of the hawser to the burning boat might readily have been elsewhere procured.

In regard to the alleged neglect of the schooner in not keeping an anchor watch, and as to the allowance of damage by the commissioner, it is sufficient to say that I concur in the opinion of the district judge and his overruling the exceptions to the report of the commissioner.

The decree in each case must be entered in conformity with the decision below; dismissing the libel for salvage in the first entitled cause, and awarding the damages found in favor of the libellants in the second.

Costs in each case.

198 (Indorsed:) Circuit court of the United States for the southern district of New York. The N. Y. Harbor Protection Co. vs. The schooner Clara, &c. Augustus M. Cox et al. vs. The Steam-Tug Clara Clarita, &c. Woodruff, circ't j. Filed Aug. 12, '73.

200 At a stated terms of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the 5th day of September, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Lewis B. Woodruff, circuit judge.

AUGUSTUS M. COX & ALS., APPELLEES,
vs.
THE STEAM-TUG CLARA CLARITA, HER ENGINES, &c.

The appeal of the claimants in this cause coming on to be heard, after hearing C. Van Santvoord, esq., counsel for the appellants, and E. H. Owen, esq., counsel for the appellees, and after due deliberation

thereon, it is ordered, adjudged, and decreed that the decree of the district court, made and entered on the 2d day of February, 1872, be, and the same is hereby, affirmed, with costs.

And it is further ordered, adjudged, and decreed that the said libellants and appellees do recover against the said steam-tug Clara Clarita, her engine, &c., or her claimants, the New York Harbor Protection Company, the sum of six thousand one hundred and twenty-eight
201 dollars and sixty-five cents, (being the amount stated in, and payable under, the decree of the said district court,) together with interest thereon, amounting to the sum of six hundred and eighty-two dollars and eighty-three cents, and the costs of this appeal, taxed at one hundred and thirteen dollars, which said sums amount in the aggregate to six thousand nine hundred and twenty-four dollars and forty-eight cents.

And it is further ordered, adjudged, and decreed that, unless the last-mentioned sum be paid, or an appeal be taken, with security so as to stay proceedings, a summary judgment be entered therefor in this court against Henry A. Burr and George M. Woodward, sureties on appeal, and that the libellants have execution to collect the same, according to law, and the course and practice of this court.

(Signed) L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) U. S. circuit court. Augustus M. Cox & al., appellees, vs. The Steam-Tug Clara Clarita, her engine, &c. Final decree. Owen, Nash & Gray, proct's for lib'l'ts and appellees. Filed Sept. 10, 1873.

202 U. S. circuit court, southern district of New York.

THE STEAM-TUG CLARA CLARITA, HER ENGINE, tackle, &c.—the New York Harbor Protection Company, claimant, appellant, *adsm.*
AUGUSTUS M. COX, LEMUEL H. HOPKINS, SILAS C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn.

Take notice that the New York Harbor Protection Company, claimant, hereby appeals to the Supreme Court of the United States from the whole and every part of the final decree, bearing date the fifth day of September, 1873, and entered in the above-entitled cause, with the clerk of this court, on or about the 10th day of September, 1873, in favor of the libellants.

New York, September 13, 1873.

Yours, &c.,

C. VAN SANTVOORD,
Proctor for Cl't, App'l't.

To KENNETH G. WHITE, Esq.,
Clerk U. S. Circuit Court.
OWEN, NASH & GRAY, Esqs.,
Proctor' for Lib'l'ts, Appellees.

203 (Endorsed:) U. S. circuit court, S. D. of New York. The Steam-Tug Clara Clarita, her engine, &c.—the New York Harbor

Protection Company, claimant, appellant, adsm. Augustus M. Cox et als., libellants & appellees. Notice of appeal. C. Van Santvoord, proctor for cl't, app'l't.

Service of a copy of within notice is hereby admitted.
New York, Sept. 15, 1873.

OWEN, NASH & GRAY,
Proc's for Lib'l'ts & Appellees.

Filed Sept. 17, 1873.

204 Circuit court of the United States for the southern district of New York.

THE STEAM-TUG CLARA CLARITA, HER ENGINE, &c.—the New York Harbor Protection Company, claimant and appellant, *adsm.*
AUGUSTUS M. COX, LEMUEL H. HOPKINS, SILAS C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn, libellants and appellees.
} Case.

The claimant, the New York Harbor Protection Company, having appealed from the decree made in favor of the appellees in the district court of the United States for the southern district of New York, the cause came on to be heard anew in this court, before the honorable Lewis B. Woodruff, circuit judge, at a circuit held in and for the southern district of New York, at the city of New York, on the 16th and 17th days of June, 1873; and on the hearing, the libel and answer being read, the counsel for the libellants read in evidence from the apostles, on the part of the libellants, the direct examination of the witnesses appearing therein to have been called for the libellants; and the counsel for the claimant and appellant read in evidence the cross-exami-
205 nation of each and every of said witnesses from said apostles.

And the counsel for said claimant and appellant read in evidence from said apostles, on the part of the claimant, the direct examination of the witnesses appearing therein to have been called for the claimant, and the counsel for the libellants read in evidence the cross-examination of each and every of said witnesses from said apostles.

The libellants' counsel also read in evidence from the apostles the direct examination of all the witnesses called for the libellant on the reference to assess damages and the exhibits referred to in such examination; and the counsel for the claimant read in evidence from said apostles the cross-examination of each and every of said witnesses.

The counsel for the claimant then read in evidence, on the part of the appellant, the direct examination, the counsel for the libellants reading the cross-examination of the following witnesses from their respective depositions:

William W. Vanderbilt	Dep., Dec. 21, 1872
William H. Foote	Dep., Dec. 21, 1872
Thomas F. Marshall	Dep., Dec. 21, 1872
William H. Knapp	Dep., Dec. 21, 1872
William Minner	Dep., Dec. 21, 1872
William Pease	Dep., Dec. 21, 1872

206 And therewith the evidence was closed, and the cause was summed up by the respective counsel and submitted to the said circuit judge, who thereafter made his decree herein, dated September 5; entered in the office of the clerk of said circuit court on September 10, 1873.

New York, Sep. 13, 1873.

(Endorsed:) U. S. circuit court, S. D. of New York. The Steam-Tug Clara Clarita, her engine, &c. The New York Harbor Protection Company, claimant and appellant, adsm. Augustus M. Cox et al., libellants and appellees. Case. C. Van Santvoord, proctor for cl't & app'l't.

Within case settled by consent.
N. Y., Sep. 13, 1873.

OWEN, NASH & GRAY,
Proc. for Lib'l'ts & Appellees.

207 Filed September 17, 1873.

208 Supreme Court of the United States.

THE STEAM-TUG CLARA CLARITA, HER ENgine, &c., the New York Harbor Protection Company, claimant and appellant,
adsm.
AUGUSTAS M. COX, SAMUEL H. HOPKINS, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn, libellants and appellees.

To the honorable the Supreme Court of the United States:

The petition of appeal of the above-named appellant showeth:

That on or about the ninth day of September, 1870, the above-named libellants filed their libel in the district court of the United States for the southern district of New York, against the steam-tug Clara Clarita, her engine, tackle, apparel, &c., and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, in which libel it is alleged, and praying as therein contained, and to which this petitioner refers for its contents; that thereafter, on or about the fifth day of November, 1870, the said claimant having executed the
209 necessary stipulations for costs and value, filed their claim and answer, alleging as therein contained, and insisting that said steam-tug Clara Clarita was not liable for the damages claimed by said libellants, as will more fully appear on reference to said answer, and to which for the contents thereof this appellant asks leave to refer.

That thereafter the said cause came on to be tried and to be heard before the honorable Samuel Blatchford, judge of said district court, on the 24th, 27th, and 30th days of October, 1871, upon the allegations and proofs adduced by the respective parties, and the said judge having advised thereon, on or about the 15th day of November, 1871, made a decretal order or sentence, bearing that date, that the libellant recover in said action against the said steam-tug Clara Clarita, her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, with their costs to be taxed, and that it be referred to a commissioner of the court to ascertain and compute the amount of such damages, and report thereon to that court, as by reference to such

decretal order will appear; that after proceeding with such reference before John A. Osborne, esq., one of said commissioners, he made his
210 report to said court, bearing date the ninth day of January, 1872, to which report exceptions were taken by this appellant; and thereafter, after argument on said exceptions, a final decree was made, bearing date the second day of February, 1872, overruling certain of said exceptions and for the recovery by said libellants against said steam-tug Clara Clarita, her engine, tackle, apparel, &c., of the sum of five thousand nine hundred and eighty-five dollars and eight cents, with costs to be taxed, and which were taxed at the sum of one hundred and forty-three dollars and fifty-one cents, in all amounting to the sum of six thousand one hundred and twenty-eight dollars and fifty-nine cents, as will more fully appear by reference to said decree, to which reference is had for its contents; and this appellant being advised that said decree of the district court was erroneous, inasmuch as the said libel should have been dismissed with costs, and for that if said libellants were entitled to a decree for any damages, damages had been which should not have been allowed, appealed from said decree to the circuit court of the United States in and for the said southern district of New York; and in their petition of appeal to said circuit court gave notice that on
211 said appeal this appellant intended to seek a new decision on the facts, on the pleadings and proofs in the district court and other proofs to be produced in the circuit court, and to pray different relief; and they prayed in their said petition that the said decree and every part thereof might be reversed with costs, or such other decree thereupon made as to the said circuit court should seem just, and that said appellees should be condemned to pay to this appellant its costs and damages.

That thereafter the said cause came on to be tried and to be heard before the honorable Lewis B. Woodruff, sitting as circuit judge in the city of New York, in said southern district of New York, on the 16th and 17th days of June, 1873, in the April term of said court, upon the allegations and proofs adduced by the respective parties, which had been transmitted on the said appeal to said circuit court, and upon the further proofs adduced by the said claimant, which had been taken in said circuit court; and the said circuit judge having advised thereon, made his decree, bearing date the fifth day of September, 1873,
212 and entered on or about the 10th day of September, 1873, with the clerk of said court, thereby affirming the said decree of said district court, and adjudging and decreeing as therein contained, to which said decree this appellant refers for its contents; and this appellant is advised and insists that said decree is erroneous, inasmuch as the said decree of said district court should have been reversed and said libel dismissed with costs; and for that if said libellants were entitled to a decree for any damage, damages have been which should not have been allowed.

And this appellant for these and other reasons appeals from the whole and every part of said decree of said circuit court to the Supreme Court of the United States, and it prays that the said decree and every part thereof may be reversed, and the libel dismissed with costs, or that such other decree may be made as to the said Supreme Court shall seem just, and that said libellant may be condemned to pay to this appellant its costs and damages in the premises.

And this appellant will ever pray, &c.

Dated New York, September 15, 1873.

C. VAN SANTVOORD,
Proctor and Advocate for Appellant.

213 Endorsed: U. S. Supreme Court. The steam-tug Clara Clarita, her engine, &c. The New York Harbor Protection Company, claimant, appellant., adsm. Augustus M. Cox and others, libellants, appellees. Petition of appeal. C. Van Santvoort, proctor for claimant and appellant,

We admit due service of a copy of the within petition this 15th day of September, 1873.

OWEN, NASH & GRAY.

Filed Sept. 17, 1873.

214 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE STEAM-TUG CLARA CLARITA, HER ENGINE, &c.—the New York Harbor Protection Company, claimant and appellant, *ads.*
AUGUSTUS M. COX, LEMUEL H. HOPKINS, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn, libellants and appellees.

Know all men by these presents, that we, Henry A. Burr, of the city, county, and State of New York, and George M. Woodward, of the city of Brooklyn, county of Kings and State of New York, are held and firmly bound unto the above-named Augustus M. Cox, Lemuel H. Hopkins, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn, in the sum of fourteen thousand dollars, to be paid to the said obligees; for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the sixteenth day of September, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the above-named The New York Harbor Protection Company has prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make its said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. A. BURR. [L. S.]
G. M. WOODWARD. [L. S.]

Sealed and delivered, and taken and acknowledged, this 16 day of September, 1873, before me.

R. E. STILWELL, *U. S. Com.*

215 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Henry A. Burr, of Number 44 East 34 st., in the city of New York, and George M. Woodward, of Number Park Place, in the city of

Brooklyn, being duly sworn, each deposes and says that he is a freeholder, and that he is worth the sum of twenty-eight thousand dollars over and above all his just debts and liabilities.

H. A. BURR.
G. M. WOODWARD.

Sworn to this sixteenth day of September, A. D. 1873, before me.
R. E. STILWELL, *U. S. Com.*

This bond approved as to form and amount and sufficiency of the sureties. New York, Sept. 16th, 1873.

SAML. BLATCHFORD.

(Indorsed:) Vol. , page , U. S. circuit court. The steam-tug Clara Clarita, her engine, &c., The New York Harbor Protection Company, claimants an dappellants, ads. Augustus M. Cox and others, libellants and apellees. Bond for costs on appeal to U. S. Supreme Court. C. Vansant , appellant's proctor. Filed this 17 day of September, 1873.

216 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to Augustus M. Cox, Lemuel H. Hopkins, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn.

Whereas the New York Harbor Protection Company, claimant of the steam-tug Clara Clarita, her engine, tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Augustus M. Cox, Lemuel H. Hopkins, Silas C. Evans, Samuel S. Thorp, Thomas R. Fort, Abraham Fort, Frederick Fort, Sarah J. Fort, and G. Kohn, against the said steam-tug Clara Clarita, her engine, tackle, &c., or her said claimant, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand and seal, the sixteenth day of September, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

SAML. BLATCHFORD. [L. S.]

217 (Endorsed:) U. S. Supreme Court. The Steam-tug Clara Clarita, her engine, &c.—the New York Harbor Protection Company, claimant & appellant, adsm. Augustus M. Cox and others, libellants & appellees. Citation. C. Van Santvoord, proctor for appellant.

Service of a copy of within citation is hereby admitted.
New York, Sept. 17, 1873.

OWEN, NASH & GRAY,
Proc's for Appellees.

Filed Sept. 17, 1873.

218 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second cir-

cuit, do hereby certify that the foregoing pages, numbered from one to 217 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Augustus M. Cox et al., libellant & appellees, against The Steam-tug Clara Clarita, her engine, &c., The New York Harbor Protection Co., claim't & appellant, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 2d day of October, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the said United States the ninety-eighth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Indorsement on cover:) No. 230. The Steam-tug Clara Clarita, her engine—the New York Harbor Protection Company, appellant, vs. Augustus M. Cox, Lemuel H. Hopkins, et al. S. New York C. C. U. S. Filed 11th October, 1873.

U. S. Supreme Court.

THE NEW YORK HARBOR PROTECTION COMPANY,
Libellant and Appellant,

v.

THE AMERICAN SCHOONER "CLARA," HER TACKLE, &c., AUGUSTUS M. COX, LEMUEL HOPKINS, *et al*,
Claimants and Appellees.

THE STEAM-TUG "CLARA CLARITA," HER ENGINE, &c., THE NEW YORK HARBOR PROTECTION COMPANY,
Claimant and Appellant,

v.

AUGUSTUS M. COX, LEMUEL HOPKINS, *et al*, OWNERS OF THE SCHOONER "CLARA,"
Libellants and Appellees.

Brief and Points of Appellant.

I.—(1.) These were two separate suits commenced in the District Court for the Southern District of New York, which are brought to this Court on an appeal by the New York Harbor Protection Company in each suit from the decree in the first above entitled of the Circuit Court of the U. S. for the same District, affirming the decree of the District Court dismissing the libel, with costs; and from the decree in the

second above entitled of the said Circuit Court, affirming the decree of said District Court, awarding damages, with costs, to the libellants in said second suit.

The libel in the first suit was filed by the New York Harbor Protection Co., as owner of the steamboat called the "Clara Clarita," for themselves and all others entitled against the schooner "Clara," to recover salvage for extinguishing a fire on board which was burning her up.

The libel in the second suit, by the owners of the schoner "Clara" was filed against the steamboat "Clara Clarita" to recover damages from fire by reason of its being communicated to the schooner while lying at anchor, by a collision with a burning ferry-boat, which had been in tow of the steamboat, and from which it had got adrift from the burning of its hawser by fire on the ferry-boat.

Although a record has been printed in each suit, yet the testimony on the merits in each is the same.

In referring to the places of the testimony in the brief, the pages referred to, are those in the record in the second suit.

The leading question in both suits is whether a steam tug, or her owner, which undertakes to tow a burning vessel on the employment of the owner or agents of the latter, and by the direction of such owner or agent, the engineer or officers of the Fire Department of a city co-operating, out of a slip where she is surrounded by combustibles, as the only means, on a sudden emergency, of saving the burning vessel from destruction by fire and of preventing the conflagration in its further progress from spreading to the wharves and adjacent buildings with such available means and appliances, as the tug is provided with and has at her command in their appropiate and proper use, is responsible for damages that may happen to other vessels or property afloat in the harbor from loss of control of the boat towed after being hauled out into the river from the hawsers used in towing burning

off from the progressive extension or bursting forth of the flames on the boat through no fault of the tug.

The libel in the first above entitled suit is found in the record in that suit, on pp. 1 to 3.

And the answer pp. 7–8.

The defence set forth in this answer, upon which most stress was laid, is found in the allegation in the third article thereof, in which the claimants of the schooner "deny that the steamboat 'Clara Clarita' was well, sufficiently or properly equipped and supplied for towing the burning ferry-boat 'James Watt' from the slip where she lay to any other place in or about the harbor, and aver that it was gross carelessness and negligence on the part of the libellants, their servants and agents, to attempt to tow the said burning ferry-boat, with the wind and tide as they were, by a hempen hawser, which was liable at any moment to be destroyed, as it was, in fact, by the flames which enveloped the boat."

The libel in the second above entitled suit is found in the record in that suit on pp. 1–2.

And the answer in the second suit is found in the record of that suit on pp. 6 to 8.

The ground upon which the tug was condemned in both Courts, was her undertaking to tow the burning ferry-boat out of her slip with combustible Manilla or hempen hawsers, with which she was provided, instead of with an incombustible chain hawser, or, as suggested by the sagacity of the Circuit Judge, in his opinion, with an incombustible chain attachment to the burning boat, extending a few feet therefrom, which should be incombustible.

The District Judge, in his opinion, holding in substance and effect, that the casualty to the schooner resulting from the loss of control of the ferry-boat after she had been brought out from the slip into the river with a hempen or Manilla hawser, from the burning of the hawsers by the fire bursting forth all over the boat, as might have

been anticipated, was not unavoidable; however properly the steam tug may have managed the navigation, after once getting the ferry-boat out into the river, inasmuch as if not provided with incombustible chain hawsers, she might have left her in the slip to burn up there, and set fire to the adjacent wharves and buildings; and further holding that the case was not within the well settled principle at Common Law, as recognized by him, that any person in case of actual necessity, to prevent the spreading of a fire, may prostrate a building in a block or street without being responsible in trespass or otherwise, that the sufferer in such case has no legal redress for the injury, and that in case of a danger happening by tempest, a passenger on a vessel may, if necessary to save the lives of the passengers, throw overboard the goods of another without being liable to trespass to the owners; for as much, as this Judge argues, it can not be held that it was necessary to set this schooner on fire in order to prevent apprehended spread of the fire, if the ferry.boat should be left to burn in the slip, in the sense in which the word necessity is understood in the principle of law referred to.

The Circuit Judge, in his opinion, concedes that the owners of the ferry-boat had a lawful right to remove their boat from the slip, notwithstanding she was on fire, and whether her remaining in the slip did or did not involve danger to other property, but only in the use of extraordinary precautions to prevent her from being carried by wind and tide against other vessels lying at anchor in the harbor, and by the use of incombustible chain hawsers.

Upon the proofs that the tug was not in fact provided with other than Manilla or hempen hawsers, the only hawsers in use for towing, or considered safe and practicable by persons experienced in the business; and that on the sudden occasion, which was not anticipated, of an accidental fire in the hold of the ferry-boat ~~which~~ in spite of the efforts to extinguish it by water thrown into the hold by steam-

pumps and engines, from the tug and other vessels, and by the firemen of Hoboken, increasing so rapidly as to threaten the destruction of the boat where she lay in the slip, and the spread of the fire to the wharves and adjacent buildings and other property, which gaining was the occasion of the direction to the tug to tow the boat out of the slip, and of her undertaking to do so, there was no incombustible chain, so far as known to the master of the tug, available for use, by him, in towing the boat out of the slip, or at his command in this emergency—it will be contended by the appellant that no negligence or fault is imputable to the tug in undertaking to tow the burning boat out of the slip, with such means and appliances as she had at command in the exercise of due care, although it might involve danger to other vessels or property afloat in the harbor, whether at anchor or not; and that there being, upon the proofs, no other ground for the imputation of fault to the management of the tug, in its further contest with the fiery element, the claim of the libellant, in the first suit against the schooner, should have been sustained, and the libel in the second suit should have been dismissed, with costs.

II.—(1.) The owner of the tug alleges for error in the decree of the Circuit Judge, in the first above entitled suit, that upon the proofs under the pleadings in that suit the Circuit Judge should have reversed the decree of the District Court, and sustained the claim of the libellant.

(2.) And for the error in the second above entitled suit, that the Circuit Judge, upon the proofs under the pleadings in that suit, should have reversed the Decree of the District Court, and dismissed the libel therein, with costs.

(3.) And for a further error in said second suit, for that if it should be adjudged that the tug was in any fault, the omission on the part of the schooner in not having a competent watch set and kept, as she lay at anchor near the

middle of the channel in the direct track of vessels moving up and down, who by sheering or slipping her chain as the burning vessel, all ablaze, was drifting toward her, might have averted all the casualty to the schooner, should be adjudged a fau't on the part of the schooner for which the damage to her should be divided.

III.—(1.) In the District Court, the following witnesses were called for the New York Harbor Protection Co.

From the "Clara Clarita":

William T. Francis, the master, pp. 9 to 27; recalled, pp. 59–63.

John M. Mason, wheelsman, pp. 33 to 43; recalled, p. 63.

Edward Palmer, the Engineer, pp. 44, 45.

Patrick Gannon, deck hand, pp. 65, 66.

William Kelland, deck hand, pp. 66 to 68.

From the employees of the Hoboken Ferry Co.,

John J. Chase, Superintendent, pp. 45 to 54.

Thomas Smith, from the boat J. Rumsey, pp. 54 to 56.

From the schooner,

Daniel B. Haley, the mate, pp. 27 to 33.

Henry Dunning, foreman of G. H. Ferris' ship yard where the "Clara" was repaired, to the value of the vessel with reference to salvage, pp. 57, 58.

And on the part of the claimant of the schooner,

Augustus M. Cox, her Captain and part owner, pp. 68 to 74.

In the Circuit Court further testimony was taken by deposition on the part of libellants in the first suit, of persons of experience in the navigation of tugs in the harbor of New York, in proof of the fact that chains were not in use as hawsers on account of the difficulty in handling them and the danger to the tug in their use and their greater liability

to kink and break than a Manilla or hempen hawser. Either in tugs employed in general towing or in wrecking, or others.

William H. Vanderbilt, pp. 100 to 102.
William H. Foote, pp. 102 to 103.
Thomas F. Marshall, pp, 103, 104.
William H. Knapp, pp. 104, 105.
William Miner, p. 105.
William Pease, pp. 105, 106.

IV.—(1.) The "Clara Clarita" was a steam propeller employed in towing ships and vessels into, out of, and about the harbor of New York as part of her business.

And for this purpose she was furnished with three five-inch hawsers, new or nearly new, and of strength sufficient to tow the largest ships; and with an additional seven-inch hawser of greater strength.

These hawsers were of Manilla or hemp, the only materials of which hawsers in use on tugs or wrecking vessels in the Port of New York for towing, were made, or which were considered safe or practicable for that purpose.

As to the size, condition and strength of these hawsers, see Francis on pp. 9, 19, in fol. 32, 26 in fol. 43, 60 in fol. 98.
John M. Mason, on p. 64.
Patrick Gannon, on p. 65, 66.
William Kelland, on p. 67.

The testimony to the size, condition and strength of these hawsers, was fully brought out to correct a suggestion as to their condition and strength, by Chase, on p. 51.

For the testimony that such hawsers as those of the tug were the only hawsers in use on tugs and wrecking vessels and why, see depositions taken in the Circuit Court above referred to.

Francis swears, (on p. 17 in fol. 28), that they had chains for the anchors which might be 50 or 75 fathoms long; but

that these chains were down in the locker and that the reason why he did not get them was that they could not handle them. That there were not men enough to handle them, even if they had taken all that belonged to the Ferry Company; and if there had such a thing been as the chain being pulled out, how could they have got the chain there again? (On p. 21 in fol. 33, 34.)

Chase, the Superintendent of the Ferry Company, on p. 48, in fols. 78, 79, 80, swears that he thinks if there had been a chain so got out in the first place from the "Clara Clarita" to the ferry-boat, it would not have drifted upon the schooner; that he did not know that the "Clara Clarita" had any chain on board, that he never knew of a tug-boat using a chain hawser, that he thought if she had had a chain she would not have fouled the bark, a chain instead of a rope hawser, that a chain when it gets hot would not pull off the fastening if it is fastened on iron; that if the chain had been fastened to an iron cleat, and that cleat fastened to an iron vessel, she certainly could not have got away; that the "Watt" had an iron cleat fastened to a wooden deck; that the Watt was a wooden boat; that there was no iron about her where she was fastened except the iron cleat; that the cleat remained there—one that he saw that morning—one of the four, he could not say that it was the one; it came from the "Watt;" he did not take it off, his men did; he did not know whether it was the cleat to which the hawser was attached, he could not say; but there was a line attached to it like the one on the "Clara Clarita" that was cut from the same cleat he had spoken of; (on p. 50); that he never knew a tug-boat furnished with chain hawsers for towing; and on cross, that a chain is the only thing that will stand fire; a hemp hawser or Manilla hawser will burn off; that he had a chain on his boat, in the chain-box, which he should think was sufficient to have towed her; that the cleat to which the hawser was attached did not burn away; that his men found part of the hawser

attached to that same cleat. He saw the hawser; that there was an anchor on board; there was too much fire to cast the anchor after he had got her out; you could not have done it.

Whether it would be prudent to attempt to tow that boat out with a hempen or Manilla hawser, would be according to circumstances. For instance, if you started her out of the slip with a hawser to stop so as to keep the fire from communicating and to get chains to her, that would be one thing, and another thing would be to have got chains to her in the first place.

(The import of this is, that it was prudent to start her out of the slip with a Manilla hawser, to stop her so far out as to keep the fire from communicating and to get chains to her.)

But then he says that he does not think there was time to have a chain to her, after you had got her out of danger. It might have been done before she was started.

The fire was heaviest in the port-side. The chains might have been made fast.

Further as to this chain (on pp. 52, 53, 54.)

This chain which he had on board was a small anchor chain, it was on one bow or the other, I cannot say which; I never used that chain in towing a boat; I don't know that it ever occurred to me that there was any necessity to use that chain at the time; the chain lies in a box; it is in such shape that it could be used as a hawser; it has a clevice at the end, and could be attached as a hawser by sticking the bight of the chain through it; its length I should think was about 45 fathoms; no there is only two shot, 30 fathoms; between the discovery that the fire could not be extinguished in the slip, and the direction to take this boat in tow, I do not think it was more than three minutes, from three to five minutes; it was a very short time; the matter of the chain, it did not occur to me at

that time; I saw it as soon as we got into the river; I can not say that I did before the hawser burned; after I got back on board the "Rumsey" then I thought of this chain; I got on board of the "Rumsey" while the tug-boat was lying there before the "Watt" sunk; the tug was lying still at the time, getting in the hawser that had been cut after the ferry-boat sunk; after I got on the "Rumsey" this matter of the chain cable occurred to me that they might have saved all this disaster if they had taken the chain out then, they could have saved it; no mention was made of any such thing at any time; I didn't make any mention of it.

Re-cross: Did you ask the Captain if he had the power to tow her round? He said he could; he didn't ask me for my chain; the deck of my boat was such as I could have got the chain safe before I started out of the slip.

Re-direct: I do not know what side the boat the chain was on; I do not know now what end it was on; at the time the order was given to take hold of the boat and she was taken in tow, I do not think we could have got from one end of the boat to the other.

This evidence of Chase to the anchor chain on the "Watt" is the only evidence of the existence of any chain on either boat, or at hand, that might have been used as a hawser in towing the boat out of the slip; but the opinion of Chase that it might have been got out of its locker and attached to the ferry-boat as a hawser before the boat was started from the slip, if it were on the nigh-end of the "Watt," but that it never occurred to him until after the ferry-boat was sunk, and he never mentioned it to anybody, is no evidence that it was accessible for use after any apparent necessity for it in the very short interval between the discovery that the fire could not be extinguished on the ferry-boat in the slip, and the direction to tow her out to prevent the fire communicating to the wharves and ad-

jacent buildings, and the fact which he swears to on p. 54, that at the time the order was given to take hold of the boat she was taken in tow, that they could not get from one end of the boat to the other, proves that this chain on the boat was inaccessible at that time.

Francis, the master of the tug, on p. 23, swears that he did not know where the chains or the anchor of the "Watts" were.

(2.) Further evidence of the perturbation of Chase in the presence of the appaling disaster to the ferry-boat is found in his evidence of his opinion of the condition and strength of the hawsers of the tug above referred to, when compared with the testimony of the witnesses to this who had used and handled them.

(3.) And still further evidence of this in his testimony to a derangement of the steering gear of the tug, and the effect, in which he is clearly mistaken as to the time and order of the event, and the effect.

Chase, on cross-examination on pp. 51, 52, swears that the wheel-ropes became jammed in the sheave or block, and so disabled the boat in her steering, that by reason of this she was not able to get to the assistance of the burning boat in time to tow her clear of the schooner. The accident is stated by him (on p. 52) to have occurred between the bank, against which the ferry-boat first drifted on the first burning off of the hawser, as hereinafter stated, and the schooner. A little further on he swears it occurred after the hawser parted. In answer to the question, could that have been repaired promptly so as to have been servicable quicker than it was? A. I do not think it could. Yet he swears a little further on that if the tug had had chains instead of rope around her wheel she could have towed the boat clear in time.

That a strand of the wheel-rope broke, through the frequent hauling round of the tug to get in position, and choked the rope in the block temporarily, and that this was

immediately removed by cutting off the strand and working the ends in, was a fact; but Mr. Chase is mistaken as to the time of its occurrence, and as to its effect in delaying the tug from proceeding to get hold of the ferry-boat in time to tow her clear of the schooner.

Captain Francis re-called, p. 59 and p. 60 in fo. 97, p. 62 in fo. 100, describes the steering gear of the tug, which consisted of iron rods from the pilot-house along the side of the boat to the aft part of the deck; from the after ends these rods were connected to the tiller with chains; from the forward ends of these rods was a rope, which worked round the barrel of the wheel, and which went out of the pilot-house on each side through sheaves or blocks to the rods on the side of the boat; and the tug had as an additional means of steering, a spare tiller, made on purpose to be used on the rudder in case anything gave out.

[This last, according to the requirement of the law, when rope is used instead of chain around the wheel, as is usual, as the testimony elsewhere shows, on tugs towing vessels into or out of the harbor, and which are liable to meet with fogs, and for the reason that a chain on the wheel causes a variation of the compass.]

The attention of Captain Francis was called to this breaking of the strand in the wheel-rope at the time. And his testimony shows that it took less than a minute to repair it, and that it occurred before the third hawser was attached and before the ferry-boat began to drift toward the schooner, which it will be recollected was not until after the third hawser parted. Fo. 97.

John Mason, the wheelsman, on p. 63, testifies about this. He assisted in repairing it, and testifies it was before the hawser parted the third time: "I am positive of that." And that there was no delay from any difficulty with the steering gear.

It is shown by the testimony of Francis and Mason, and by the deck hands Gannon and Kelland, who handled the

hawsers, that it was the large 7-inch hawser that was attached the third time, after the second hawser, the one used in hauling the burning boat off from the barque had burned off, and that it was the large one which was afterwards also attached to the boat the fourth time to haul her off from the schooner.

Francis, pp. 13, 14.
Mason, p. 35.
Kelland, p. 68.

V.—Other part of the business of the tug was putting out fires which might break out on vessels in the harbor of New York and the waters of the East and North Rivers, and for this purpose she was equipped and furnished with powerful pumps and hose, worked by steam, as steam fire engines.

She was also furnished with axes for scuttling, &c. Her berth was at a pier at the foot of Canal Street, New York, the pier of the Pacific Mail Steamship Company, where she was kept with her fires banked, so as to get up steam and be ready to move at short notice to render assistance in extinguishing fires on ships and vessels in the harbor.

On the evening of the 1st of August, 1870, while lying at her berth, at the foot of Canal Street, with her fires banked, a smoke was observed ascending on the New Jersey side of the river, at Hoboken, which indicated the existence of a fire there, and steam was got up at once on board the tug, and she proceeded over to that side of the river to assist in extinguishing the fire. On arrival at Hoboken it was ascertained that the fire was in the hold of the ferry-boat "James Watt," lying in the Christopher Street slip, of the Hoboken ferries.

See the Sketch, Ex. A.

The bow of the "Clara Clarita" was brought alongside the starboard bow of the ferry-boat (calling the outward end

of the ferry-boat the bow) between the starboard bow of the ferry-boat and the rack of piles which separates the Christopher Street slip from the slip next south, wherein was the boat "Paterson" and the gas tank of the Ferry Company, and was attached to the starboard bow of the ferry-boat by one of her five-inch hawsers; and then two hose pipes from the "Clarita's" pumps were taken on board the ferry-boat, and the water was played through them on to the fire in the hold, and this was continued for an hour or more.

At the same time water was played into the hold of the "Watt" on the fire there, by engines from the boats "Rumsey" and "Chancellor," which were in the Christopher Street Slip, outside the "Watt," one on her port bow, and the other nearly end on, and from the "Hoboken" in the slip next south of the slip in which was the gas tank, and from hydrants of the Ferry Company.

The fire which was in the hold gained upon these efforts to put it out, and it was discovered by employees of the Ferry Company and the Hoboken firemen on board, that it had reached the deck over the hold on the under side of it, where the water from the hose could not be directed (it being impossible so to direct it without going into the hold full of flame and smoke), and was ascending to the joiner work, of which the cabins and wheel-house, &c., on deck, were composed, when a direction was given by Mr. Chase, the Superintendent of the Ferry Company, or the Chief of the Hoboken Fire Department, who were on board the ferry-boat standing together, to the captain of the tug, to pull the burning boat out of the slip, and tow her on to Hoboken Flats, which are the nearest flats just above Castle Point.

Immediately on receiving this direction or order, the end of the hawser which was on the tug was shifted to aft to the starboard chock one-third from aft, the other end being attached to an iron cleat on the starboard bow of the ferry-

boat, where it had been fastened on first coming to on the ferry-boat's starboard bow, and the tug (with the Superintendent of the Ferry Company and men of the Hoboken Fire Department on board, p. 13), then backed, so as to clear her bow from between the ferry-boat and the rack of the ferry slip, and then went ahead, bow out, on a course south-easterly, canting down the river to keep the ferry boat clear of vessels lying at anchor above the ferry slip on the Hoboken side of the river.

The wind was blowing off the Jersey shore southwesterly, and the tide flood.

After the ferry-boat had been hauled on this course about 200 yards out of the slip, the flames burst out fore and aft, and burned the hawser off, and the ferry boat was drifted by the tide foul of a barque at anchor above the ferry slip, before the men on the tug could get hold of her again, and set fire to the barque on the Hoboken side of the river.

As soon as it was possible a hawser was got to the ferry-boat, and she was hauled off from the barque to the southward and eastward—a course necessary to pull her clear, and which would have the effect to carry tug and ferry-boat, in proceeding round to the flats, further over to the eastward in the river.

With this second hawser the ferry-boat was got round heading up the river, when this hawser parted, from being burned off by the fire on the ferry-boat. Then, as soon as it could be done, a third hawser, this time the large hawser of seven inches, was attached to the ferry-boat. This hawser was taken to the ferry-boat in a life boat belonging to the ferry-boat, and by men from the ferry-boat and the Hoboken Fire Department.

Francis, pp. 9–13.

Kelland, the deck hand of the tug who was directed by Captain Francis to go with this hawser to the burning boat, was prevented by these men. (See his testimony as to this, p. 68 in fol. 110.) This third and larger hawser was also burned off.

Francis says it either pulled out or burned (p. 14.) There is nothing in the evidence of the witnesses from the tug so decisive that this third hawser was burned off, as in the case of the first two hawsers which are proved to have been burned, by the ends being found burnt when hauled in. (See testimony of Gannon, Kelland and others.) The end of this third hawser was not hauled in on board the tug and examined, but left in the water until picked up by the men in the life-boat, by whom it was again carried to the burning boat after it had got foul of the schooner, and was finally cut to disengage the tug from the ferry-boat as she afterwards sank.

John J. Chase, the Superintendent of the Ferry Co. on board the tug, was of opinion the hawser attached the third time was burned off. (His testimony, p. 51.)

Chase was mistaken in supposing the hawser attached the third time was not the larger hawser of 7 inches; and as to the condition of the hawser, see as to this, Francis, p. 26 in fol. 43; Mason, p. 38 in fol. 61; Kelland, p. 67.

It is not material, so far as the question of fault of the tug is concerned, whether this third hawser was pulled out or burned off, inasmuch as it was attached by the firemen and the men from the ferry-boat; but the probable, if not the only admissible inference, in view of the fact that the boat was enveloped in flames at the time, and the great strength of the hawser, is that it was burned off.

At the time this third hawser lost its hold, the tug had got the ferry-boat round so that the tug and ferry-boat were standing in toward the Flats on the Jersey Shore, on a course a *little North of West*, the schooner at anchor bearing from the tug, northeasterly, and from the ferry-boat nearer to the northward, and at a distance of 200 to 300 yards, (p. 14.)

On this third parting of the hawser to the ferry-boat, the ferry-boat was driven by the tide and wind on to the

schooner, which was at anchor near the middle of the river, about off 30th Street, New York, (p. 14.)

Place where she was, Francis, p. 24.
Cox, p. 69.

And as she struck the end of the schooner's bowsprit she swung against her *starboard* bow and set fire to her bowsprit jib-boom, and the bow of the schooner, and foremast, (p. 14.)

She afterwards swung across the schooner's bow in pulling her off.

See also p. 26.

Every effort was made on the part of the tug to get a line to the burning boat again after the third parting of the hawsers as soon as possible; but they were not able to do this until she was afoul of the schooner and had set fire to the forerigging, and sails and bowsprit of the schooner.

The hawser (the large hawser) was again attached to the burning boat, and she was hauled off from the schooner to the south-westward, and after proceeding a short distance, some 300 or 400 feet or more, sank in the river, when the hawser was cut, and the tug came back to the schooner off on her starboard side heading down the river, and by her exertions in the use of her pumps put out the fire on board the schooner and saved her from destruction by the fire which had made such progress, that but for the services of the tug the schooner would have been burned up.

Upon the proofs, the tug, her master and crew did all they could do to prevent the casualty to the schooner, and are not chargeable with any fault which either produced or contributed to the casualty.

See testimony of Francis, called and recalled;
Mason " "
Gannon,
Kelland,
Palmer.

VI.—As to occurrences after towing the "Watt" out of the slip, it is submitted that in the manner of towing the burning boat out of the slip, on a course southeast, to clear the vessels at anchor on the Jersey side of the river, the tug did what was proper, and after the fire suddenly had burst out all over the ferry-boat and burned off the hawser, and until the sinking of the ferry-boat after she had been hauled off from the schooner, it is submitted that the master and crew of the tug, by persistent efforts, did all that brave and skillful men could do to take the burning vessel on to the flats, and to prevent her from doing damage to other vessels.

After the burning of the first hawser, through no fault of the tug or her master or crew, the case was one of extremity, in which every subsequent movement was of necessity which prescribed her course.

To this stage of the case, after the burning of the first hawser, the maxim of Lord Bacon's Elements, Regula V, applies.

The law charges no man with default where the act is compulsory and not voluntary, and where there is not a consent and election; and therefore, if either there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason as in presumption of law man's nature cannot overcome, such necessity carrieth a privilege in it.

VII.—Where the "Watt" lay in the slip, with the fire in the hold, in close proximity to ferry racks and the wharves and the ferry houses of the Hoboken Ferry Company connecting with the buildings of the Morris & Essex R. R. Co., and other property adjacent, without possibility of extinguishing the fire by scuttling her, and for which there was not a sufficient depth of water in the slip, and with a further hindrance of being buoyed up by tanks in the

hold, when the order was given by the Superintendent of the Ferry Company or the Chief Engineer of the Fire Department standing by him to tow her out of the slip, upon ascertaining that the fire could not be got under by the fire engines and pumps, the fire gaining upon these efforts, the flames having already broke out under the guards and reached her joiner work, it was evident that the only means of saving the boat and preventing the spread of the conflagration to the wharves and adjacent buildings and other property, was an immediate removal of the boat out of the slip, with a view, if possible, of beaching her on the nearest flat, it not being possible to bring her to anchor after getting out of the slip from the condition of her deck.

John J. Chase, pp. 45–47, 48 to fo. 78.
Thomas Smith, pp. 54–56.
Francis, on p. 23, as to anchoring.

Under the pressure, in fighting the fire, of the necessity of an immediate removal of the boat to prevent the spread of the conflagration, the Superintendent of the Ferry Company, either with or without the concurrence of the Engineer of the Fire Department, who was present, had a lawful right to direct the boat to be towed out of the slip, and the tug, upon that order or direction, had a lawful right to undertake to tow her out with such hawsers as she was provided with, and were at her command in the emergency, although not incombustible, and although there might be reason to expect a loss of temporary or other control of the boat after towing her out, from the burning of the hawser from the fire bursting forth or spreading on the boat, and without being responsible for damage that might happen to vessels in the harbor, or other property afloat, that the tug could not prevent.

This, upon the principle that fire, like a flood suddenly bursting forth, is a common enemy, against which every man has a right to defend himself with such means as he may have at hand, although it may involve risk of loss to others.

In the language of Bramwell B., in Nield *v.* London and Northwestern Railway Company, L. R. 10 Exch. 7, a case for recovery of damage from defendant's measures to protect its property from a flood, "It would be most mischievous if the law were otherwise, for a man must then stand by and see his property destroyed, out of fear lest some neighbor might say, 'You have caused me an injury.'"

See the case L. R. 10 Exch. 4, and the citation there from the opinion of the Lord Chancellor, Menziers *v.* Earle, of Broad alban, 3 Bli (N. S.), 414–420. See also Torbush *v.* City of Norwich, 38 Conn., 225.

VIII.—But, further, the undertaking to tow this boat out the slip being necessary to prevent the spread of the conflagration on the boat to the wharves and adjacent buildings was, in contemplation of law, an act done for the Commonwealth, which any man may do without being liable to an action.

And as a justification or ground of exemption from liability is of the same power as the happening of loss or damage by the act of God, as by tempest or other irresistible force.

See opinion of Judge Nelson, in Mayor of N Y. *vs* Lord, 17 Wend, 185, on p. 290; Maleverer *vs.* Spinke, 1 Dyer, 35 *b* at 36 *b.* (40); Respublica *vs.* Sparhawk, 1 Dallas, 357 at 363. McKean, C. J., Mouse's Case, 12 Coke, 63; Governor *vs.* Meredith, 4 T. R., 797, Butler, J.

It being lawful, to prevent the spread of a conflagration, to destroy another man's property by direct act, it is lawful to do an act to prevent the spread of a conflagration, although involving contingent risk of damage to the property of another, which is less. The former, as the greater, contains the latter.

If lawful to do this, it is lawful to do it with such means as are at command, and a denial of the right to do this, except by the exercise of extraordinary precautions, and by the use of means not at hand when the exigence arises, deprives the rule of all efficacy, and is equivalent to a denial of the right. Within the principle of the Common Law recognized by these authorities, to prevent the spread of the conflagration, it was lawful to tow the burning boat out of the slip with such hawser as the tug-boat was provided with, and had at command, although at the contingent risk of damage to a vessel or vessels in the harbor, if, by the burning of the hawser the boat should get adrift; and the act being lawful, negligence is not predicable of the doing of it, nor is there liability for the consequences.

IX.—After the ferry-boat had been hauled clear of the schooner, the captain and crew came in a boat to the tug and asked for an axe to scuttle the schooner, which was given to them. At the same time the master of the tug said to them: "Don't be afraid, we will come and put the fire out." This assurance prevented the scuttling of the schooner, and as soon as the tug could get clear of the ferry-boat then sinking, by cutting her hawser, the tug was hauled alongside the schooner, off her starboard side, head down the river, and attached by lines to her side, and by the use of her steam pumps and hose, after three or four hours' exertions extinguished the fire. In doing this the tug was herself exposed to danger from the flames, and also her crew, and she succeeded in saving for her owners a vessel in condition which she was after being burnt, worth sixteen to seventeen thousand dollars, which otherwise would have been destroyed.

Haley, p. 9; Francis, pp. 15–24.

In the libel, at the end of IV. article, it is alleged on information and belief that she was of the value of $20,000.

In the answer they deny that she was of the value of $20,000; but they do not say how much less she was worth, and upon the application of common law principles to the pleadings, it stands admitted that she was worth the largest amount less $20,000.

Her valuation, as saved, according to the testimony of Henry Dunning, pp. 57–58, a ship carpenter employed by the owners of the schooner to repair her, who examined her on the ways at Red Hook, where she was hauled up for repairs from being burnt, was $16,000 to $17,000.

The schooner was bonded at the agreed value of $10,000, to cover the libellant's claim for salvage.

The objection is no longer tenable that the libellant, by reason of its being a corporation, is not entitled to claim as salvor.

Nor is it any objection that other parties assisted who do not make any claims.

The "Camanche," 8 Wallace, 448.
The "Blackwell," 10 Wallace, 1.

It is in the interest of shipping that enterprises like that of the libellant, in fitting up the tug with powerful steam pumps, and keeping her at all times ready with her fires banked to move on short notice to go where it may be necessary to extinguish fires in the harbor, should receive due encouragement.

The Delphos, 1 Newb., Ad. 412, 420, 421.
The T. P. Leathers', 1 Newb., Ad. 421, at 425–427, 431, which are fire cases.

The libellants here are entitled to claim both as owners of the tug and the salvors.

X.—The tug not being to blame for the collision of the ferry-boat with the schooner, from which the schooner took

fire, the libellants are entitled to an award of salvage compensation against the schooner in their suit against her.

The "Golden Light," on appeal to the P. C., Lush R., 355.

XI.—The tug not being to blame for the ferry-boat drifting afoul of and setting fire to the schooner, the cross libel of Augustus Cox and others should have been dismissed, with costs.

XII.—The schooner was at anchor near the middle of the river, about off 30th Street, New York (p. 24); she was tailing up the river, and the first point of contact with her was the end of the jib-boom, and before this the master of the tug had halloed to her to put her wheel to starboard and pay out her chain, (p. 14.) If there had been a watch on deck to do what might be necessary, the collision could have been avoided by sheering and slipping her chain, for which there was time.

Francis, p. 16.

Mason, p. 36.

Haley, mate of the schooner, p. 28.

But no anchor watch was set on the deck of the schooner, and the master and crew did not come out until the boat had drifted afoul.

Haley, pp. 27, 28, 30, 31.

In the place where the schooner was, near the middle of the river, in the direct track of vessels moving up or down, they should have had a watch on deck, and this omission should be held to charge the schooner with fault, for which the damage should be divided if the tug should be adjudged to have been in fault.

The "Indiana" Abbott, Adm. R. 330, 335.

Clapp *v.* Young, 6 Law Reporter, 11.

The "Sapphire," 11 Wallace, 164.

C. VAN SANTVOORD,

Counsel for Appellants.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty

Supreme Court

OF THE UNITED STATES.

The New York Harbor Protection Company,
Appellants,

vs.

The American Schooner Clara, her tackle, &c., Augustus M. Cox, *et al.*,
Appellees.

Record No. 229.

The Steam-Tug Clara Clarita, her Engine—The New York Harbor Protection Company,
Appellant,

vs.

Augustus M. Cox, Lemuel H. Hopkins *et al.*,
Appellees.

Record No. 230.

Appellees' Statement and Points.

These are appeals from a decree of the Circuit Court for the Southern District of New York entered in each of the above cases, affirming the decrees of the District Court entered therein.

The suits are *in rem*, and were commenced in the order of time in which they are entitled.

The first is an action for *salvage*, and the other is for damages arising from a collision with a burning ferry-boat which the steam-tug was engaged in towing, as hereafter stated. The claims in both suits arose out of one and the same occurrence, and so the testimony was taken as if there had been but one suit, and the cases were tried together in the District and Circuit Court.

The libel in the suit for *salvage* was dismissed in the District and Circuit Court, with costs. In the other suit a decree was entered in both courts in favor of the appellees, for their damages and costs.

It appears from the pleadings and proofs, and as to which there is no material if any contradiction, that in the evening of the 1st August, 1870, the above named steam-tug *Clara Clarita*, belonging to the appellants, was lying in her berth at the foot of Canal street, North river, ready for employment in assisting vessels needing help, and that upon discovering a fire on the opposite shore she went across and found that the ferry-boat *James Watt* was on fire; that the tug-boat was thereupon requested to assist, which she did, in efforts to extinguish the fire. That after working an hour or more in throwing water into the hold of the boat, it was found that the fire could not be subdued and the tug-boat undertook, for a compensation, to haul the burning boat out of the slip, and to tow her around upon the Hoboken flats, a distance of a mile or more up the river. A four and one-half inch manilla hawser was thereupon attached to the ferry-boat, and she was hauled out of the slip when the flames burst forth and the hawser, becoming burned or from some other cause, parted, and the boat went adrift; that before the boat was recovered she had drifted by the wind and tide upon and set fire to a bark which lay at anchor in the vicinity.

That the same hawser or another of that size and

description, was again attached to the boat, and after dragging her away from the bark a short distance, that also having become burned, parted, and the ferry-boat again went adrift and drifted upon and set fire to the schooner, which was lying at anchor far away from the route of the tug-boat, as hereafter stated. A new seven-inch manilla hawser was then got out and attached to the burning boat, by which it was dragged away from the schooner and towed upon the flats, where she grounded and was left.

The schooner, when she was so run into and set on fire was lawfully and properly lying at anchor in the North river, a few hundred yards to the westward and abreast of Thirtieth street. She had a good light set and burning in the fore rigging, as required by law. The night was warm, the weather fair and clear, all hands were below asleep (except one man, who was on deck) and knew nothing of the danger until the collision. The tide was flood and the wind about S. S. W.

Having so placed the burning boat upon the flats, the tug-boat returned to the schooner, which was extensively on fire, and assisted in saving her from destruction, and for these services the *appellant* claims to recover as *salvage* a "large and liberal compensation."

The district judge held that as the schooner was at anchor in a proper place the burden of proof was on the tug-boat to prove that she was not in fault in towing the ferry-boat against the schooner, and none the less so because the ferry-boat was on fire.

That the action of the tug in towing the ferry-boat away from the dock was not within the rule which authorizes one, in case of necessity, to destroy another's property in order to prevent the spread of fire.

That the towing of the ferry-boat out by a hempen hawser which was likely to burn off and let her drift, was an act of negligence on the part of the tug-boat.

That the drifting of the ferry-boat against the schooner was not an inevitable accident, but was the result of negligence on the part of the tug, and the latter, therefore, was not entitled to salvage.

That the schooner was without fault and was entitled to recover her damages. (*The schooner Clara, The steam-tug Clara Clarita*, 5 *Ben.*, 375.)

The Circuit Court concurred in the conclusion of the district judge and for substantially the same reasons. (*See the opinion of the circuit judge, printed in the Record.*)

First.—*As to the case for damages to the schooner arising from the collision and fire. Rec., No.* 230.

I.—The tug-boat was in fault, and the sole cause of the collision and damages.

Knowing that the ferry-boat was extensively on fire, and that the flames might burst forth at any moment and envelope the entire boat, without having any interest at risk or any *duty* to perform, she voluntarily, for a compensation, undertook to haul the ferry-boat out of her slip and around upon the flats, in doing which she allowed the ferry-boat to get adrift, and to drift upon and set fire to the schooner.

II.—Although the burden of proof, under the circumstances, is upon the tug-boat to excuse herself, yet no sufficient excuse has been shown. The drifting of the ferry-boat did not arise from any inevitable accident, because the tug-boat did not use the necessary and proper precautions to avoid it. "It is not an inevitable accident when a "master proceeds carelessly on his voyage, and "afterwards circumstances arise when it is too "late for him to do what is fit and proper to be "done." (*The "Juliet Erskine,"* 6 *Notes of Cases*, 633, *approved* 24 *How.*, 313; *The "Louisiana,"* 3 *Wall.*, 164; *The "Grace Girdler,"* 7 *Wall.*, 196, 203.)

III.—Conceding that the owners of the ferry-boat had a lawful right to remove her from the slip, yet that in nowise justified the tug-boat in undertaking such removal without the exercise of due care and precaution to prevent her from getting adrift and colliding with other vessels. The danger of moving the ferry-boat in her situation was extraordinary, and required more than usual precautions to secure and retain control of her.

IV.—But such precautions were not exercised, nor did the tug-boat exercise even ordinary prudence in the matter. It was exceedingly improper for her even to attempt to tow the burning boat out of her slip, and yet she undertook to tow her a mile or more to the flats, through numerous vessels lying at anchor, and that with a manilla hawser. All parties expected the flames to break forth at any moment. It was this that induced the attempt to move the boat from the slip, and yet with all this in mind, the tug-boat attempted the work with a $4\frac{1}{2}$ inch manilla hawser, which, as must have been known, was liable to be burned off. This was gross negligence. If the desire had been merely to haul the ferry-boat out, or shift her locality before the fire would break out, there might have been some excuse for using such a hawser, but the distance which the tug had undertaken to tow her, considering that she was waterlogged, necessarily required much longer time than to simply move her.

It was not enough to justify the tug-boat in undetaking this work, that she had the ordinary wrecking apparatus; she should have had and used chains to attach the hawser to the burning boat, and thus avoid the danger of her getting adrift. There were chains on the tug-boat with shackles at the ends. There was also a chain upon the ferry-boat which might have been used

or if not, there is no doubt that a suitable chain could have been procured from the shore. There is no evidence to the contrary, nor does it appear that the chains at hand could not have been used in the first instance.

V.—It is not a sufficient answer to this to say that the hawser was the kind ordinarily used in towing vessels not on fire, for it was knowingly to be put to the uncommon and extraordinary use of towing a water-logged ferry-boat all on fire, when the strain thereon would not only be great, but its exposure to the fire and its liability to be burned almost inevitable. The testimony of the witnesses, therefore, that manilla hawsers are commonly used in moving vessels, has no application to this case.

VI.—The tug-boat herself was not in a suitable and proper condition to undertake the work. Her tiller-rope was defective, and broke while the ferry-boat was drifting upon the schooner and it had to be repaired before the tug-boat could proproceed to regain the ferry-boat (*Rec.*, 229, *fol.* 98). It is not sufficient to say that the rope could be repaired in a minute or minute and a half, for that was long enough to allow the boat to drift foul of and set the schooner on fire. The tiller-rope was known to be defective, for it had broken before (*Rec.*, *fol.* 101).

VII.—The maxim "*necessitatas inducit privilegium quoad jura privata*" does not apply to this case; nor was it a case of general conflagration, when the destruction of property by authority is allowed under the maxim "*salus populi suprema lex*," so that the law applicable to cases arising under such circumstances does not apply. But the case is simply one of voluntary towage for compensation, and the tug-boat was as

much bound to prevent the ferry-boat from getting adrift, and thereby or otherwise colliding with the schooner as if she had not been on fire. The fire increased the duty and care in performing the work (*Sturges* vs. *Boyer*, 24 *How.*, 110–122).

VIII.—The schooner was not in fault.

She was lawfully and properly lying at anchor with a good and sufficient light set in her fore-rigging, burning brightly. This is not disputed.

That she had no sufficient anchor-watch on duty at the time was not a fault. The statutory rules did not require such a watch. All that is required of a vessel at anchor is to have a proper light displayed (13 *U. S. Stat.*, 59, *Art.* 7). The testimony shows that it is not customary for vessels like the schooner to have an anchor-watch, unless it be when there is fog, or the weather is boisterous and dangerous (*Rec.*, 229, *fols.* 52, 114).

But the want of an anchor-watch did not cause the collision. This is not pretended. It is said, however, that if there had been an anchor-watch when the danger became imminent the schooner might have been sheered by the use of her wheel or her cable slipped, and so got out of the way of the burning boat.

It is clear, from the testimony, that with all hands on deck she could not have been sheered far enough either way to avoid the burning boat. The boat was 164 feet long, and it came down broadside towards and upon the bows of the schooner, and struck her about midship, and, therefore, to have avoided her, the schooner must have sheered over 82 feet, which was impossible, and so the master testifies (*Rec.*, 229, *fol.* 118).

Nor could the cables have been slipped by a single watchman. The necessity for so slipping the cable did not arise until the boat was coming down upon the schooner, when it would have been too

late to call all hands from below, and Captain Cox says (*fol.* 118) it could not have been done.

IX.—As to the damages. There is no error in overruling the 2d, 3d, 4th, and 5th exceptions to the commissioner's report (*fol.* 152).

It was proper to allow the full price for the new sails, those on the vessel having been damaged so as to require new ones. Credit was given for what the old sails brought (*The Baltimore*, 8 *Wall*, 385).

The bills for repairs having been paid by the libellants, interest was properly allowed on the amount paid, by way of damages. The wages of the master, as allowed by the commissioner, was a proper charge.

Second.—*As to the claim for Salvage* (*Record No.* 229).

I.—The claim for salvage under all the circumstances is unconscionable. The idea that the owners of the tugboat after having, by their negligence, set the schooner on fire, should claim salvage, because she returned and assisted in extinguishing the fire is preposterous.

Even if the schooner had been in fault in lying where and as she did, yet the tug-boat was clearly in fault, and that deprives her from making any claim for salvage, because she rendered the service for her owner's benefit. (*The Cargo ex. Capilla*, 1 *Eng. Law Rep.*, 1 *Adm. & Eccl.*, 356; *The Iola*, 4. *Blatch, C, C. R.*, 31.)

Third.—The decree of the Circuit in both cases should therefore be affirmed, with interest and costs.

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